

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

LEROY R. CASTLE, Attorney,

Defendant

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 15

This matter was heard on November 2, 2007 before a hearing committee of the Disciplinary Hearing Commission composed of the Chair, Sharon B. Alexander, and members Robert F. Siler and Johnny A. Freeman. Jennifer A. Porter and Robert A. Crabill represented Plaintiff, the North Carolina State Bar. Defendant, Leroy R. Castle, represented himself. Based upon the pleadings, the evidence presented at the hearing, and the admissions considered pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f), the hearing committee hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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, Leroy R. Castle (hereinafter "Castle" or "Defendant"), was admitted to the North Carolina State Bar in 1984, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During all or part of the relevant periods referred to herein, Castle was engaged in the practice of law in the State of North Carolina and maintained a law office in Durham, Durham County, North Carolina.
4. Castle was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.
5. The Complaint in this action was filed on July 9, 2007.

6. Defendant accepted service of the Summons and Complaint on July 11, 2007.

7. Defendant failed to file an answer or any responsive pleading by the deadline established by Rule 4 of the North Carolina Rules of Civil Procedure and 27 N.C. Admin. Code 1B § .0114(e).

8. Upon Plaintiff's motion, default was entered against Defendant by the Secretary of the State Bar on September 17, 2007.

9. Plaintiff filed a Motion for Default Judgment on September 17, 2007 and certified service of the Motion for Default Judgment on that date by depositing a copy of the same in the U.S. Mail in a postage prepaid envelope addressed to Defendant's current address.

10. Plaintiff's motion was granted and Default Judgment filed on November 2, 2007. The Default Judgment entered findings of fact and conclusions of law and reserved as the sole issue for hearing what discipline, if any, should be imposed.

11. In or about January, 2001, Keenan Headen (hereafter "Headen") was an associate and employee of Defendant.

12. Headen practiced law as Defendant's associate.

13. Defendant had the obligation to supervise Headen's activities.

14. In or about January, 2001, Headen established an attorney-client relationship with Edna Hinton. Headen undertook to represent Edna Hinton for injuries sustained in an automobile accident on or about January 4, 2001.

15. Edna Hinton made numerous, repeated efforts to communicate with Headen to learn the status of Edna Hinton's legal matter.

16. Headen failed to respond to Edna Hinton's communications and failed to keep Edna Hinton informed of the status of her matter.

17. On one occasion, Edna Hinton had to resubmit to Headen paperwork Edna Hinton had already provided to Headen but which Headen had lost.

18. On or about December 23, 2004 Edna Hinton spoke with Defendant, who informed Edna Hinton that Headen was no longer practicing in his office.

19. During the December 23, 2004 conversation, Defendant assured Edna Hinton that Edna Hinton's case was moving forward.

20. Beginning on or about January 13, 2005, Edna Hinton made numerous, repeated efforts to communicate with Defendant to learn the status of an attempted service by publication on the Defendant in Edna Hinton's civil case.

21. Defendant failed to respond to Edna Hinton's communications and failed to keep her informed of the status of her matter.

22. Defendant gave Edna Hinton contradictory information about the status of service of her complaint by publication.

23. Defendant failed to publish the notice of service of the complaint by publication until on or about June 18, 2005.

24. On or about September 5, 2006, Edna Hinton filed a grievance with the State Bar concerning Defendant's failure to communicate and respond to her attempts to communicate.

25. On or about October 5, 2006, Defendant received a Letter of Notice from the Chair of the Grievance Committee regarding the grievance filed by Edna Hinton.

26. As set forth in the Letter of Notice, Defendant was required to respond to the Letter of Notice within 15 days of receipt.

27. Defendant did not respond to the Letter of Notice within the 15 day period as required.

28. On or about October 23, 2006 the State Bar sent Defendant a follow up letter to the Letter of Notice advising him that the State Bar had not received a response to the Letter of Notice.

29. The follow up letter required Defendant to respond by November 2, 2006.

30. Defendant did not respond to the follow up letter by November 2, 2006 as required.

31. On or about November 27, 2006 the State Bar requested that Margaret McCreary (hereinafter "McCreary"), a District 14 Councilor, attempt to contact Defendant in regards to his failure to respond to the Letter of Notice.

32. Ms. McCreary did contact Defendant and notified Defendant of his obligation to respond to the Letter of Notice.

33. Respondent did not respond to the Letter of Notice.

34. On or about February 13, 2007 Defendant was served in person with a Subpoena demanding a response to the Letter of Notice and production of documents from Edna Hinton's file.

35. Defendant was required to respond to the subpoena by February 26, 2007.

36. Defendant did not respond to the subpoena by February 26, 2007.

37. On or about February 28, 2007 a State Bar investigator sent Defendant a follow up letter asking him to respond to the Letter of Notice and Subpoena.

38. Defendant never responded to the State Bar investigator's letter or to the subpoena.

39. On or about March 2, 2007, an unidentified person hand delivered Edna Hinton's file to the receptionist at the State Bar.

40. In or about June, 2003, Headen established an attorney-client relationship with Karen Hinton.

41. Headen undertook to represent Karen Hinton for injuries sustained in an automobile accident on or about June 17, 2003.

42. In or about the year 2004 Karen Hinton provided all the documents to Headen that were necessary for Headen to resolve the claim.

43. In late 2005 Karen Hinton was contacted by Defendant's office stating that Defendant was taking responsibility for Karen Hinton's case because Headen was no longer practicing in Defendant's office.

44. Karen Hinton made numerous, repeated efforts to communicate with Defendant to learn the status of her legal matter.

45. Defendant failed to respond to Karen Hinton's communications and failed to keep Karen Hinton informed of the status of her matter.

46. On or about May 15, 2006, Karen Hinton filed a grievance with the State Bar concerning Defendant's failure to communicate and respond to her attempts to communicate.

47. On or about June 20, 2006, Defendant received a Letter of Notice from the Chair of the Grievance Committee regarding the grievance filed by Karen Hinton.

48. As set forth in the Letter of Notice, Defendant was required to respond to the Letter of Notice within 15 days of receipt.

49. Defendant did not respond to the Letter of Notice within the 15 day period as required.

50. On or about June 9, 2006 Defendant filed a complaint on Karen Hinton's behalf in Wake County Superior Court.

51. On or about August 14, 2006 the State Bar sent Defendant a follow up letter to the Letter of Notice advising him that the State Bar had not received a response to the Letter of Notice and requiring Defendant to provide a written response by August 24, 2006.

52. Defendant did not respond to the follow up letter by August 24, 2006 as required.

53. On September 27, 2006 Defendant received another follow up letter to the Letter of Notice advising him that the State Bar had not received a response to the Letter of Notice.

54. The State Bar's second follow up letter required Defendant to respond to the Letter of Notice by October 2, 2006.

55. Defendant did not respond to the Letter of Notice or to either follow up letter by October 2, 2006.

56. On or about October 3, 2006 Defendant responded to the Letter of Notice.

57. On or about October 3, 2006 the State Bar sent Defendant a follow up letter to his response to the Letter of Notice which asked Defendant to provide additional information by October 17, 2006.

58. Defendant did not respond to the October 3 follow up letter by October 17, 2006.

59. On or about December 7, 2006 Defendant left a voicemail message for State Bar counsel acknowledging that he was aware of the grievance and documents that the State Bar was demanding.

60. In his voicemail message, Defendant stated he would provide the documents within the next few days.

61. Defendant failed to produce the documents.

62. On or about January 4, 2007 another subpoena was issued by the State Bar requiring Defendant to produce records including the Karen Hinton file on or about January 18, 2007 at the Grievance Committee Meeting of the State Bar. A State Bar investigator served Defendant with the subpoena in person on January 5, 2007.

63. Defendant appeared and produced a copy of the Karen Hinton client file on or about January 18, 2007.

64. The client file contained nothing to refute Karen Hinton's allegations of neglect and failure to communicate.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over Defendant, Leroy R. Castle, and the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) as follows:

- (a) By failing to publish notice of service of Edna Hinton's complaint by publication in a timely manner and failing to pursue Edna Hinton's case promptly, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (b) By failing to respond and communicate with Edna Hinton, Defendant failed to keep his client reasonably informed about the status of her matter in violation of Rule 1.4(a)(3);
- (c) By failing to respond to Edna Hinton's communication attempts regarding the status of her case, Defendant failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (d) By failing to respond to the Grievance Committee's Letter of Notice, the follow up letters and Subpoena, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).
- (e) By failing to file the complaint on Karen Hinton's behalf until June 9, 2006, and only after Karen Hinton had submitted a complaint to the State Bar regarding Defendant's lack of communication, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (f) By failing to communicate and respond to Karen Hinton, Defendant failed to keep his client reasonably informed about the status of her matter in violation of Rule 1.4(a)(3);
- (g) By failing to communicate and respond to Karen Hinton, Defendant failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (h) By failing to respond to the Grievance Committee's Letter of Notice, the follow up letters, and subpoena, Defendant knowingly failed to respond to a lawful demand for information from an admissions or disciplinary authority in violation of Rule 8.1(b).

Based upon the foregoing Findings of Fact and Conclusions of Law, the evidence presented at the hearing, and the admissions considered pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f), the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Castle's misconduct is aggravated by the following factors:
 - a. Prior disciplinary offenses, to wit: an admonition issued on November 16, 1998, a censure issued on October 30, 2001, a reprimand issued May 28, 2005, and a reprimand issued on February 17, 2006;
 - b. Pattern of misconduct;
 - c. Multiple offenses;
 - d. Refusal to acknowledge wrongful nature of conduct;
 - e. Substantial experience in the practice of law.
2. Castle's misconduct is mitigated by the following factors:
 - a. Absence of a dishonest or selfish motive.
3. The aggravating factors outweigh the mitigating factors.
4. Castle's neglect of his clients' legal matters had the potential to cause significant harm to his clients, Edna Hinton and Karen Hinton. By failing to communicate and failing to diligently pursue their cases, Castle risked missing the deadline to file these claims.
5. Castle's conduct resulted in significant harm to the profession. Castle's neglect and failure to communicate with Edna and Karen Hinton caused them to feel their trust had been betrayed. Both expressed a sense of distrust of the legal profession in general due to Castle's conduct.
6. Castle's failure to respond to the State Bar's grievance process and Disciplinary Hearing Committee pleadings resulted in potential significant harm to the profession. The legal profession is entrusted with the privilege of self-regulation. The State Bar can only regulate the profession if its members respond to inquiries of the State Bar and otherwise participate in this self-regulation. Castle's failure to participate in this self-regulation jeopardizes the profession's ability to remain self-regulating.
7. The hearing committee has considered lesser sanctions and finds that discipline short of suspension would not sufficiently protect the public for the following reasons:

- a. Castle's conduct caused potential significant harm to his clients and caused potential significant harm and actual significant harm to the profession as detailed above;
- b. Castle's comments made at the hearing regarding the inappropriately low priority Castle placed on calls from clients who had not paid him in advance and on communications from the State Bar demonstrates that Castle fails to appreciate the importance of responding to all clients and fails to appreciate that his obligation to respond to the State Bar is as important a professional obligation as his obligation to zealously represent his clients;
- c. Castle has been previously disciplined on multiple occasions for conduct that includes failure to respond to the State Bar and neglect of client matters, the same conduct at issue in this case, demonstrating that lesser sanctions have not been effective to change Castle's behavior and protect the public; and
- d. Castle has engaged in multiple violations of the Revised Rules of Professional Conduct over a substantial period of time and his misconduct was not an aberration or the result of a mistake;
- e. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Castle committed, would be inconsistent with the orders of discipline entered by this body in similar cases, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

8. The hearing committee finds that the only sanction in this case that can adequately protect the public is an active suspension of Defendant's license for a period of time.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Leroy R. Castle, is hereby suspended from the practice of law in North Carolina for two years.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. All costs of this action are taxed to Defendant. Defendant must pay the costs within 30 days of service of the statement of costs by the Secretary.

5. After serving six months of the active suspension of his license, Defendant may apply to have the remainder of the suspension stayed by filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:

- a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
- b. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him;
- c. That he has kept the North Carolina State Bar Membership Department advised of his current business and home address;
- d. That he has responded to all communications from the North Carolina State Bar received after the effective date of this order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner; this includes communications from the Attorney Client Assistance Program of the State Bar as well as formal notices from the State Bar;
- e. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state; and
- f. That he paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension. The State Bar does not send membership and CLE notices to members who are suspended so it is Defendant's obligation to contact the appropriate departments on a timely basis, ascertain his financial and CLE obligations during his suspension and to timely satisfy those obligations.

6. The procedures of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b) shall govern Defendant's petition for a stay of the remainder of the suspension of his law license.

7. If the Secretary finds that Defendant has proven compliance with the conditions of this order by clear, cogent, and convincing evidence, the Secretary shall put into effect the stay of the remaining period of suspension provided for in this Order by reinstating Defendant to active status subject to the terms, conditions, and requirements of this Order of Discipline, with Defendant's active status contingent upon continued compliance with the terms of this Order. Such stay will continue in force only as long as Defendant continues to comply with all conditions in this Order. The Disciplinary Hearing Commission will retain jurisdiction of the matter until all conditions of the Order are satisfied, under 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0114(x).

8. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he continues to comply with the following conditions:

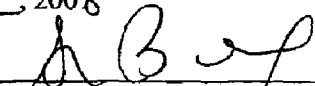
- a. The conditions set out in paragraphs 5 (c) – (f) of the Order of Discipline section of this Order; and
- b. Defendant shall promptly and timely respond to his clients, including returning telephone calls from all clients regardless of whether the clients have paid Defendant.

9. If an order staying any period of this suspension is entered and the Defendant fails to comply with any of the conditions referenced in Paragraph 8 of the Order of Discipline section of this Order, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

10. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must prove each of the matters set out in paragraphs 5 (a) – (f) of the Order of Discipline section of this Order by clear, cogent, and convincing evidence before seeking reinstatement of his license to practice law.

11. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members,
this the 4 day of January, 2008


Sharon B. Alexander, Chair
Disciplinary Hearing Committee