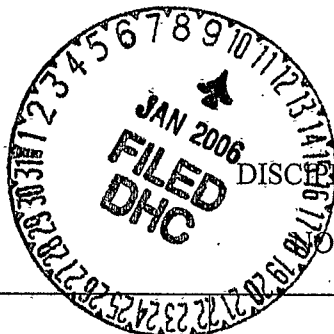


NORTH CAROLINA
WAKE COUNTY



7602
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 47

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JAMES A. BEALES, JR., Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND CONSENT ORDER
OF DISCIPLINE

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, and members Karen Eady-Williams and R. Mitchel Tyler. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. The Defendant, James A. Beales, Jr., represented himself. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence 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. Defendant, James A. Beales ("Beales"), was admitted to the North Carolina State Bar in 1977, 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, Beales was engaged in the practice of law in the State of North Carolina and maintained a law office in Elizabeth City, Pasquotank County, North Carolina.
4. Beales 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. During the time he practiced law in Elizabeth City, Beales maintained a trust account for client funds at Centura Bank in Rocky Mount, North Carolina.

6. At about the end of February 2003 Beales closed his law office and ceased practicing law as a sole practitioner. At about this same time Beales began employment with Edward Jones Investment Office in Kitty Hawk, North Carolina.

7. After disbursing some funds as he completed some client matters, by about July 1, 2003 Beales had about \$6,347.36 remaining in his trust account. Beales has not disbursed funds held for clients from his trust account to or on behalf of those clients since July 1, 2003. Beales did not disburse all client funds remaining in his trust account to the clients or according to the clients' instructions prior to ceasing his practice of law.

8. During the month of February 2003 but prior to closing his practice that same month, Beales accepted new clients and accepted money from these clients to represent them in their legal matter, including but not limited to the following clients: Christina Sheppard and Michelle L. Lewis.

9. When he undertook the representation of the clients described in paragraph 8 above in February 2003, he did not inform them that he would close his practice at the end of that month and cease representation of them at that time.

10. When Beales closed his law practice in February 2003 he left legal matters unresolved for the following clients: Christina Sheppard, Michelle L. Lewis, Elsie Branch, Charles Grandy, Mazeline B. Curry, and Michael Smithson.

11. Beales did not arrange for alternative legal representation or an otherwise orderly termination of representation for the clients named above.

12. Beales did not contact these clients to inform them of his intent to close his practice, to discuss alternate representation for the clients, or to otherwise discuss or arrange an orderly termination of his representation of these clients.

13. Beales did not refund unearned fees to these clients when he closed his law practice and ceased representation of his clients.

14. Beales did not return client files to these clients when he closed his law practice and ceased representation of his clients.

15. Beales was served with a petition for fee dispute pertaining to Branch on or about October 29, 2003 and was required to respond within 15 days of receipt. Beales did not timely respond. He responded with a letter dated January 5, 2004, received by the State Bar on January 12, 2004.

16. Beales was served with a petition for fee dispute pertaining to Curry on or about July 12, 2004 and was required to respond within 15 days of receipt. Beales did not respond to the Curry fee dispute letter.

17. As a result of Beales' failure to timely respond to the Branch fee dispute, on or about December 12, 2003 Branch was notified that Beales failed to participate in the fee dispute program and a grievance file was opened on Beales for failure to participate in the fee dispute program. Likewise, Curry was informed of Beales' failure to participate in the fee dispute program regarding her fee dispute and a grievance file was opened regarding this failure to participate.

18. Beales was served with Letters of Notice issued by the Chair of the Grievance Committee pertaining to Smithson, Lewis, and Sheppard on or about October 29, 2003, pertaining to Branch on or about March 11, 2004, and pertaining to Grandy on or about June 22, 2004. He was required to respond to each Letter of Notice within 15 days of receipt.

19. Beales provided no response to the Letters of Notice pertaining to Branch and Grandy.

20. Beales obtained an extension of time to respond to the Letters of Notice pertaining to Sheppard, Lewis, and Smithson until December 1, 2003. Beales did not submit a timely response. He did provide a response letter dated January 5, 2004, received by the State Bar on January 12, 2004.

21. Beales signed an Acceptance of Service of a Letter of Notice pertaining to the Curry grievance on June 27, 2005. Beales had 15 days from receipt to respond. Beales did not respond to the Letter of Notice pertaining to Curry.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, James A. Beales, Jr., and the subject matter.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline as follows:

- (a) By failing to respond to the Letters of Notice issued by the Chair of the Grievance Committee pertaining to Branch, Curry, and Grandy and by failing to timely respond to the Letters of Notice issued by the Chair of the Grievance Committee pertaining to Sheppard, Lewis, and Smithson within the deadline established in the Letter of Notice and by the rules, Beales failed to timely respond to inquiries by the Bar in violation of Rule 8.1(b) of the

Revised Rules of Professional Conduct and N.C. Gen. Stat. § 84-28(b)(3);

- (b) By failing to timely respond to the notice of petition for fee dispute resolution pertaining to Branch and Curry, Beales failed to participate in good faith in the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f);
- (c) By failing to notify his clients of his intent to close his practice and by not contacting his clients when he closed his practice to discuss the status of their cases, Beales failed to keep his clients reasonably informed about the status of the matter in violation of Rule 1.4(a);
- (d) By closing his practice and abandoning his clients and their pending legal matters, Beales failed to act with reasonable diligence and promptness in representing his clients in violation of Rule 1.3;
- (e) By retaining and failing to refund any unearned portion of the fees paid to him by the clients whose cases he left unresolved when he closed his law practice, Beales collected a clearly excessive fee in violation of Rule 1.5(a); and
- (f) By failing to give his clients reasonable notice of his intent to terminate his representation, by failing to make alternate arrangements for representation for his clients, and/or by failing to return client files upon closing his law practice, Beales failed to take reasonable steps to protect his clients' interests upon his termination of the representation in violation of Rule 1.16(d).

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Beales' misconduct is aggravated by the following factors:
 - a. Pattern of misconduct;
 - b. Multiple offenses;
 - c. Substantial experience in the practice of law;
 - d. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules and orders of the DHC; and

e. Vulnerability of victims, particularly Curry, who was out of state and therefore particularly dependent upon Beales should action be needed in the North Carolina family law matter for which she had retained him, and the clients whose cases Beales accepted in February 2003 without notifying them of his intent to end his practice of law that month

2. Beales' misconduct is mitigated by the following factor:

a. No prior discipline.

3. The aggravating factors outweigh the mitigating factor.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of the Defendant, James A. Beales, Jr., is hereby suspended for five (5) years. This suspension shall go into effect thirty days from the mailing of this order to Beales at the address of record for Beales held by the Membership Department of the State Bar.

2. Beales shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the mailing of this order upon Defendant.

3. Beales shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline & Disability Rules, including but not limited to distributing any client property, including funds held for clients in his trust account, to his former clients or initiating appropriate escheat procedures. Defendant shall file an affidavit certifying he has complied with the wind down rule with the Secretary of the North Carolina State Bar within 30 days of the effective date of this order.

4. In addition to complying with the provisions for reinstatement listed in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125 of the North Carolina State Bar Discipline & Disability Rules, Beales must have complied with the following conditions in order to qualify for reinstatement:

a. Reimbursed the following clients the full amounts paid to him by these clients no later than 30 days after this order is mailed to him, as set out below. If Beales is holding any funds in his trust account for these clients, the reimbursement under this provision shall include disbursement of the trust funds to such clients plus payment of any difference between the amount held in trust

and the amount listed below. If Beales cannot locate any of these clients, Beales shall contact the State Bar. If the State Bar cannot provide accurate contact information for such client(s), Beales shall pay the reimbursement into his trust account and initiate appropriate escheat procedures within the 30 day deadline.

- i. Christina Sheppard, \$400.00;
- ii. Michelle L. Lewis, \$190.00;
- iii. Elsie Marie Branch, \$4,000.00;
- iv. Charles Grandy, \$2,500.00;
- v. Mazeline B. Curry, \$1,500.00; and
- vi. Michael Smithson, \$1,000.00.

b. Provided the State Bar with documentation of the reimbursements required above, including copies of the payments made and correspondence sent to such clients and a release authorizing the State Bar to obtain bank records to verify these disbursements no later than 45 days after the mailing of this order to Beales;

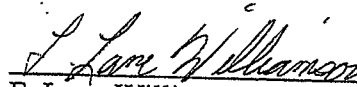
c. Disbursed all remaining funds currently held in his trust account to the appropriate clients, or initiate appropriate escheat procedures, within 30 days of the mailing of this order to him;

d. Provided the State Bar with documentation showing disbursement of all remaining funds in his trust account and/or the initiation of appropriate escheat procedures and a release authorizing the State Bar to obtain bank records to verify these disbursements no later than 45 days after the mailing of this order to Beales;

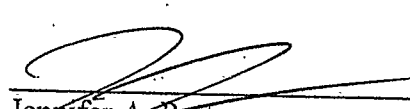
e. Paid the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of notice of the costs being mailed to him at his address of record; and

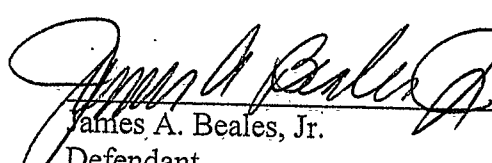
f. Responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in each communication.

Signed by the Chair with the consent of the other hearing committee members,
this the 6th day of January, 2007.


F. Lane Williamson
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:


Jennifer A. Porter
Deputy Counsel
Attorney for Plaintiff


James A. Beales, Jr.
Defendant