

DEC 1999
FILED
DHC

12448

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

V.

Defendant

FINDINGS OF FACT

2. Defendant, Jon S. Johnson, ("Johnson"), was admitted to the North Carolina State Bar on August 18, 1984 and is, and was at all relevant times, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant to this complaint, Johnson actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Matthews, Mecklenburg County, North Carolina.

4. Johnson was properly served with process and waived his right to a formal hearing.

5. On approximately April 15, 1998, Tracy D. Savage retained Johnson to represent her on a DWI matter pending in Mecklenburg County District Court.

6. Ms. Savage paid Johnson a fee of \$1,250 for representing her in the DWI matter.

7. Ms. Savage dismissed Johnson from his representation of her on the DWI charge in approximately August 1998.

8. Ms. Savage requested a partial refund of the \$1,250 fee she had paid Johnson for his representation on the DWI matter.

9. Johnson declined to return any portion of the \$1,250 fee, which he contends he fully earned, as detailed in his answer.

10. Ms. Savage subsequently filed with the State Bar a request for fee arbitration against Johnson regarding the DWI matter.

11. Johnson was served with a notification of mandatory fee arbitration on October 13, 1998 and was required to respond within 15 days of the receipt of the notification.

12. Johnson failed to respond within 15 days.

13. Johnson was subsequently served with a follow-up letter from the Fee Arbitration Committee on November 15, 1998, requesting that he respond to Ms. Savage's fee arbitration petition within 10 days of receipt of the letter.

14. Johnson failed to respond to this follow-up letter within 10 days.

15. Harry B. Warren, the State Bar Fee Arbitration Coordinator, contacted Johnson by telephone in December 1998 and requested that Johnson respond to the fee arbitration petition.

16. Johnson again failed to respond to Ms. Savage's fee arbitration petition.

17. A grievance file was opened by the State Bar against Johnson for his repeated failure to respond to the Fee Arbitration Committee.

18. Johnson received a letter of notice from the Grievance Committee regarding his failure to respond to Savage's fee arbitration petition on March 23, 1999.

19. Johnson failed to respond to the letter of notice within 15 days of its receipt.

20. Johnson received a follow-up letter from the State Bar requesting him to respond to the Grievance Committee on April 29, 1999.

21. Johnson failed to respond by April 29, 1999.

22. Johnson was subsequently subpoenaed to appear and produce documents regarding his failure to respond to the Grievance Committee on June 10, 1999.

23. Johnson was served with the subpoena on May 18, 1999.

24. Johnson failed to appear in response to the subpoena on June 10, 1999 at 10:00 a.m.

25. Johnson sent a response to the grievance by facsimile at 9:16 a.m. on June 10, 1999.

26. Johnson's June 10, 1999 response addressed his representation of Ms. Savage but did not address his failure to respond to the fee arbitration committee set forth in the Letter of Notice and his failure to respond to the resulting grievance.

27. Johnson was subsequently subpoenaed to appear at the Grievance Committee meeting in Pinehurst on July 21, 1999.

28. Johnson did appear on July 21, 1999 in response to this second subpoena.

29. After deliberations, the Grievance Committee found probable cause that Johnson failed to respond to the Fee Arbitration and Grievance Committees.

30. The Committee found no probable cause to believe that Johnson violated any Revised Rules of Professional Conduct in representing Ms. Savage.

Based upon the foregoing Findings of Fact and the consent of the parties, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over Jon S. Johnson and the subject matter.

2. Johnson'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) & (3) as follows:

a. By repeatedly failing to respond to the requests of the State Bar Fee Arbitration Committee, Johnson failed to participate in good faith in non-binding arbitration of a fee dispute in violation of Revised Rule 1.5(f), and

b. By repeatedly failing to respond to requests for information regarding the grievance initiated for his failure to respond to the Fee Arbitration Committee, Johnson knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

Based upon the foregoing Findings of Fact, Conclusions of Law, and the consent of the parties, the hearing committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Johnson's misconduct is aggravated by the following factors:

a. Prior Disciplinary Offenses

(1) Johnson was reprimanded in November 1989 for repeatedly failing to respond to a client's grievance and for failing to zealously represent that client; and

(2) Johnson was reprimanded in November 1992 for failing to communicate with a client and for repeatedly failing to respond to that client's grievance.

b. Substantial experience in the practice of law

2. Johnson's misconduct is mitigated by the following factors:

- a. absence of dishonest or selfish motive;
- b. personal or emotional problems: Johnson has suffered several deaths in his family, which in turn have contributed to his depression mentioned below;
- c. cooperative attitude toward the proceedings;
- d. character and reputation;
- e. mental disability or impairment: Johnson has been diagnosed with and is currently being treated for recurrent major depression;
- f. remorse;
- g. remoteness of prior offenses.

3. The aggravating factors do not outweigh the mitigating factors.

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

ORDER OF DISCIPLINE

1. The license of Jon S. Johnson is hereby suspended for six months, effective 30 days from service of this order upon him. The period of suspension is stayed for two years upon the following conditions:

- a. Johnson shall not violate any Revised Rule of Professional Conduct, including failing to respond to the State Bar, during the stayed suspension.
- b. Johnson shall not violate any local, state, or federal criminal law during the stayed suspension.
- c. Johnson shall pay the costs of this proceeding as assessed by the Secretary within 60 days from the service of the costs upon him by the Secretary.
- d. Johnson shall agree to be supervised by the North Carolina State Bar Lawyer Assistance Program (hereafter "LAP") and cooperate fully with that program. In connection therewith, Johnson shall:
 - (i) Enter into a consent order with LAP within 30 days of service of this order upon him and shall comply with all terms of the consent order with LAP throughout the period of the suspension;
 - (ii) Authorize his psychiatrist, psychologist, and any other physician or medical personnel who evaluates or treats him during the suspension, to release, upon request, to the State Bar Office of Counsel and LAP, information about his status as a patient;
 - (iii) Instruct his treating psychiatrist and psychologist to inform the Office of Counsel and LAP immediately in writing if at any point during the suspension he ceases to be a patient or otherwise fails to comply with the course of treatment prescribed by his psychiatrist and psychologist; and
 - (iv) Be responsible for having LAP forward quarterly reports to the State Bar Office of Counsel no later than January 1st, April 1st, July 1st, and October 1st for the remainder of the stayed suspension.
- e. Johnson shall be responsible for ensuring that his treating psychiatrist, Dr. G.H. Dornblazer, or another psychiatrist approved in advance by the

State Bar, forward quarterly reports to the Office of Counsel and LAP certifying that for the past quarter:

- (i) He has followed all recommendations for treatment of any diagnosed psychological conditions, including depression; and
- (ii) In the psychiatrist's opinion, Johnson's psychiatric condition(s) will not prevent him from adequately performing his responsibilities as an attorney, or pose a threat to the public, if he is allowed to continue practicing law.

These reports shall be provided to LAP no later than January 1st, April 1st, July 1st, and October 1st, for the remainder of the stayed suspension.

f. Johnson shall be responsible for ensuring that his treating psychologist, Dr. Mark Worthen, or another psychologist approved in advance by the State Bar, forward quarterly reports to the Office of Counsel and LAP certifying that for the past quarter:

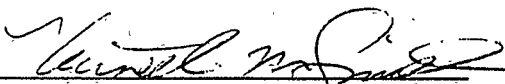
- (i) He has followed all recommendations for treatment of any diagnosed psychological conditions, including depression; and
- (ii) In the psychologist's opinion, Johnson's psychological condition(s) will not prevent him from adequately performing his responsibilities as an attorney, or pose a threat to the public, if he is allowed to continue practicing law.

These reports shall be provided to the Office of Counsel and LAP no later than January 1st, April 1st, July 1st, and October 1st, for the remainder of the stayed suspension.

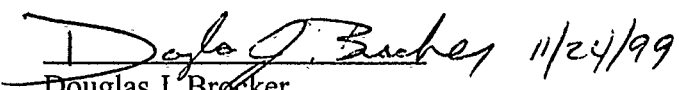
2. If, upon motion by the State Bar, a Hearing Committee of the DHC finds that Johnson has violated any of the conditions in Section 1(a)-(f) of this Order, the suspension of Johnson's license shall be activated. If the suspension is activated, prior to seeking reinstatement of his license, Johnson must:

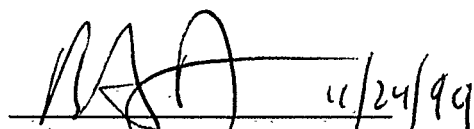
- (a) comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules; and
- (b) send the State Bar documentation that he has satisfactorily complied with the conditions set forth in section 1(a)-(f) for the six months immediately preceding his petition for reinstatement.


Signed by the chair with the consent of the other hearing committee members, this
the 1 day of December, 1999.


Hearing Committee Chair

We Consent:


Douglas J. Brøcker
Counsel for Plaintiff


Robert A. Donat
Counsel for Defendant


Jon S. Johnson
Defendant