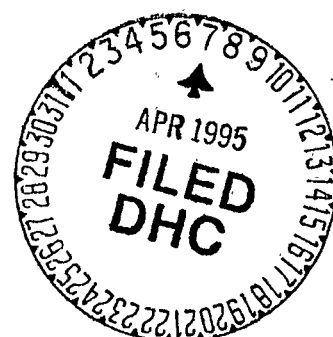


14413

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

94 DHC 21



THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	FINDINGS OF FACT
vs.)	AND
RICHARD M. MILLER, ATTORNEY,)	CONCLUSIONS OF LAW
Defendant)	

This cause was heard by a hearing committee of the Disciplinary Hearing Commission comprised of Henry C. Babb, Jr., Mary E. Lee, and A. James Early, III, on Friday, April 7, 1995. Plaintiff was represented by R. David Henderson and defendant was not present at the hearing. Based upon the entry of default dated February 16, 1995, the evidence presented, and the arguments of counsel for the State Bar, the committee makes the following:

FINDINGS OF FACT

1. The North Carolina State Bar (hereafter "plaintiff") 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. Richard M. Miller (hereafter "Miller") was admitted to the North Carolina State Bar on September 11, 1987, 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, 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, defendant was actively engaged in

the practice of law in the State of North Carolina and maintained a law office in the City of Fayetteville, Cumberland County, North Carolina.

4. The complaint in this action was filed on November 28, 1994.
5. An alias and pluries summons was issued at 12:37 p.m., December 15, 1994, by L. Thomas Lunsford, II, Secretary of the North Carolina State Bar.
6. Defendant was served with the alias and pluries summons and complaint by the Cumberland County Sheriff's Department on January 19, 1995.
7. Pursuant to Title 27, N.C.A.C., Chapter 1, Subchapter B, Section .0114(e)(formerly Article IX, Section 14(E) of the Rules and Regulations of the North Carolina State Bar), defendant's answer to the complaint was due by February 8, 1995.
8. Defendant did not file an answer or other pleading, or motion to extend time to file an answer or other pleading, by February 8, 1995.
9. The Secretary of the North Carolina State Bar entered default against defendant on February 16, 1995.
10. On February 6, 1995, the Clerk of the Disciplinary Hearing Commission sent defendant a notice stating that the hearing of this matter would be held at 10:00 a.m. on Friday, April 7, 1995.
11. On February 16, 1995, counsel for plaintiff sent defendant a notice stating that plaintiff's motion for order of discipline would be heard at 10:00 a.m. on Friday, April 7, 1995.
12. On or about May 29, 1990, Mr. Brent Thompson hired Miller to represent him regarding a workers' compensation claim arising from an injury Thompson sustained while working for Westinghouse Electric.
13. Thompson's claim was set for hearing on October 5, 1992. Pursuant to a pre-trial order filed August 25, 1992, Miller was required to initiate preparation

of the pre-trial agreement and forward it to defendant's counsel. The pre-trial order stated that Miller's failure to timely comply with this requirement could result in the imposition of sanctions, including removal of Thompson's case from the hearing docket.

14. Miller failed to initiate preparation of the pre-trial agreement as required by the pre-trial order. Therefore, by order filed September 25, 1992, Thompson's case was removed from the docket and his request for hearing was treated as though it was withdrawn.
15. Throughout Miller's representation of Thompson, Miller failed to reasonably communicate with Thompson concerning the status of his claim.
16. As a result of Miller's failure to initiate the pre-trial order and his failure to reasonably communicate with Thompson concerning the status of his case, Thompson discharged Miller. By letter dated September 22, 1993, Thompson notified Miller that he had hired another attorney, Ms. Mary V. Carrigan, to represent him. However, Miller failed and refused to withdraw as attorney of record with the Industrial Commission.
17. In the September 22, 1993 letter to Miller, Thompson asked Miller to forward his file to Ms. Carrigan and provided her address. However, Miller failed and refused to send Thompson's file to Ms. Carrigan.
18. Thompson sent Miller two follow-up letters dated October 21, 1993, and December 15, 1993, requesting that his file be sent to Ms. Carrigan. However, Miller failed and refused to do so.
19. On March 25, 1994, during the hearing of The North Carolina State Bar v. Richard M. Miller, 93 DHC 22 and 94 DHC 2, Miller testified, under oath, that he had recently sent Thompson's file to Ms. Carrigan, Thompson's new attorney. However, at the time of this sworn statement, Miller had not sent the file to Thompson's new lawyer.
20. On February 21, 1994, Thompson filed a grievance concerning these matters against Miller with the North Carolina State Bar. On March 1, 1994, this matter

was referred to the 12th Judicial District Grievance Committee for investigation.

21. By letter dated March 15, 1994, Miller was notified of Thompson's grievance and asked to send a response to the investigating member by April 15, 1994. Miller failed to send a response as requested.
22. The local committee sent the results of its investigation to the State Bar by letter dated April 29, 1994. Since Miller had not responded to the local committee, the State Bar issued a subpoena dated May 18, 1994, commanding Miller to appear at the offices of the State Bar on June 3, 1994, to respond to the above allegations. Miller received the subpoena on May 20, 1994. However, Miller failed and refused to appear at the State Bar offices on June 3, 1994.

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

CONCLUSIONS OF LAW

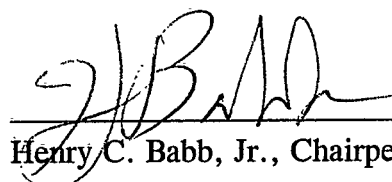
- a. The committee has jurisdiction of the parties and the subject matter of this proceeding. In addition, defendant was properly served with two notices to appear at the hearing of this matter.
- b. By failing to initiate the pre-trial agreement prior to Thompson's workers' compensation hearing, Miller failed to act with reasonable diligence and promptness in representing Thompson in violation of Rule 6(b)(3), and disregarded a ruling of a tribunal made in the course of Thompson's workers' compensation proceeding in violation of Rule 7.6(a).
- c. By failing to reasonably communicate with Thompson concerning the status of his workers' compensation claim, Miller failed to keep his client reasonably informed about the status of the case and failed to comply promptly with reasonable requests for information in violation of Rule 6(b)(1).
- d. By failing to relinquish Thompson's file despite numerous requests to do so, Miller failed to promptly deliver to Thompson property belonging to him to which he was entitled and which was in Miller's possession in violation of Rule 10.2(e).

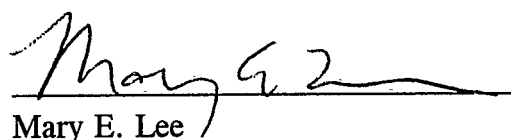
e. By failing to withdraw as attorney of record with the Industrial Commission after he had been discharged by Thompson, Miller violated Rule 2.8(b)(4).

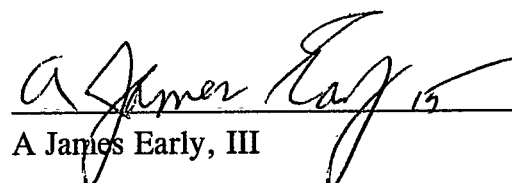
f. By falsely testifying under oath before a hearing committee of the Disciplinary Hearing Commission that he had sent Thompson's file to his new attorney when in fact he had not, Miller committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c), and knowingly made a false statement of fact in connection with a disciplinary matter in violation of Rule 1.1(a).

g. By not cooperating with the local grievance committee's investigation and by not complying with the State Bar's subpoena, Miller knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(b), and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

Signed by the hearing committee members, this the 7th day of April, 1995.

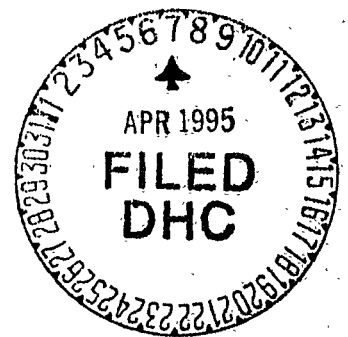

Henry C. Babb, Jr., Chairperson


Mary E. Lee


A. James Early, III

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

94 DHC 21



THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
RICHARD M. MILLER, ATTORNEY,)
Defendant)

ORDER OF DISCIPLINE

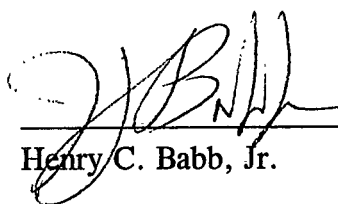
Based upon the foregoing Findings of Fact and Conclusions of Law, and further based upon the evidence and arguments presented by plaintiff concerning the appropriate discipline, the hearing committee finds the following additional facts:

1. There are three aggravating factors in this case: prior discipline, multiple offenses, and substantial experience in the practice of law.
2. There is one mitigating factor in this case: absence of a dishonest or selfish motive.
3. The aggravating factors outweigh the mitigating factors.

Based upon the evidence and arguments presented and the above aggravating and mitigating factors, the hearing committee enters the following Order of Discipline:

1. Defendant, Richard M. Miller, is DISBARRED from the practice of law in North Carolina.
2. Defendant shall submit his license and membership card within 30 days of service of this order.
3. Defendant shall pay the costs of this proceeding.

Signed by the chairperson with the consent of the other committee members, this the 7th day of April, 1995.



Henry C. Babb, Jr.

[97]