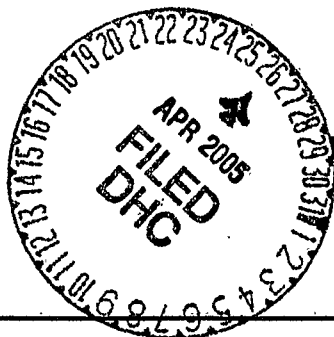


NORTH CAROLINA

WAKE COUNTY



16075

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
O4 DHC 45

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
v. )  
MICHAEL L. UNTI, )  
Defendant )

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

This matter came on for hearing on March 11, 2005 before a hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, John M. May, and Donald G. Willhoit; with A. Root Edmonson representing the North Carolina State Bar and Jeffrey M. Young representing the Defendant. Based upon the consent of the parties, the hearing committee makes 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. The defendant, Michael L. Unti ("Unti"), was admitted to the North Carolina State Bar on August 19, 1988 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 the 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, Unti actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Raleigh, Wake County, North Carolina.

4. In 1996, Unti agreed to represent Richard H. Lamere ("Lamere"), a client who also was a practicing attorney in Connecticut. The representation involved a civil claim against an attorney and that attorney's former firm ("the defendants") for alleged breach of fiduciary duty, constructive fraud and fraud. The claims arose out of the defendants' representation of Lamere's grandmother, Ruth L. Goodnow, and the trustees of the Goodnow Trust in a collection

action involving a corporate reorganization bankruptcy in the 1970's. Lamere was and remains a beneficiary of the Goodnow Trust.

5. On November 30, 1998, Unti filed a civil action on Lamere's behalf in the United States District Court for the Middle District of North Carolina, file number 98-CV-1039.

6. The defendants filed motions to dismiss the claims and, on June 2, 2000, those motions were granted in part and denied in part. The Court's order allowed Lamere's fraud claims against the defendants to proceed to discovery.

7. On June 5, 2000, Unti assured Lamere that he would promptly commence a course of discovery by drafting interrogatories and production requests for Lamere's review and supplementation. He also agreed to notice the depositions of key witnesses as soon as a Local Rule 26 scheduling order was entered. Unti advised Lamere that formal discovery could not begin before that scheduling order was entered.

8. Lamere told Unti that he would like to attend the pre-trial conference during which the scheduling order would be negotiated.

9. Unti negotiated a scheduling order with opposing counsel, but no pre-trial conference was held. However, Unti failed to promptly send Lamere a copy of the scheduling order after it was entered.

10. On July 18, 2000 and July 20, 2000, the defendants served Unti with two sets of interrogatories and document production requests ("discovery requests").

11. Unti attempted to mail the discovery requests, but the mailing was returned on August 3, 2000.

12. Lamere called Unti on August 3, 2000. During the telephone conversation, Lamere told Unti that he would be on a long-planned family vacation from August 11-21, 2000, and he instructed Unti to send the discovery requests to him by overnight mail and to move for an extension of time for him to respond.

13. On August 4, 2000, Lamere received the discovery requests from Unti. He did not receive the scheduling order.

14. On August 4, 2000, Lamere telephoned Unti and told him that, due to the burdensome nature of the discovery requests and his travel schedule, and because of the delay in receiving the discovery requests, Lamere would need Unti to request a 30-day extension of time for him to respond.

15. On August 4, 2000, Unti advised Lamere that he would file a motion to obtain an extension.

16. After reviewing the discovery requests over the weekend of August 5, 2000 and considering the size of the task involved, Lamere faxed Unti an instruction on August 8, 2000 to request a 60-day extension rather than the 30-day extension they had discussed.

17. After sending the fax, Lamere attempted to call Unti, but was told that he was unavailable. Lamere was referred to another attorney in Unti's office, Margaret Lumsden ("Lumsden"), who advised Lamere that counsel for one of the defendants had indicated that he would not consent to an extension of more than ten days. Lumsden further advised Lamere that it was unlikely that the Court would grant a 60-day extension in the face of opposition. Lamere instructed Lumsden to move for a 30-day extension because his circumstances required it.

18. On August 16, 2000, Lumsden served defense counsel with a motion for extension of time to respond to the discovery requests that was filed with the Court on August 21, 2000. Lumsden stated in the motion that defense counsel consented to the granting of the motion. The motion only asked for a 10-day extension of time allowing Lamere until August 28, 2000 to respond.

19. Unti did not send Lamere a copy of that motion, nor did Unti or Lumsden tell him that he had only until August 28, 2000 to respond to the discovery requests.

20. When Lamere returned to his office on August 21, 2000, the only document he had received from Unti was a copy of the scheduling order. That order set a deadline for joining additional parties or amending pleadings that had already passed, and an October 31, 2000 deadline for completion of general discovery.

21. On August 22, 2000, Unti told Lamere that the motion for an extension of time had been timely filed, but no order had yet been received. Unti explained that illness, pending trials, and staff problems had prevented him from preparing drafts of plaintiff's discovery. Unti did not tell Lamere that only a 10-day extension had been requested for Lamere to respond.

22. On August 24, 2000, Magistrate Judge Russell A. Eliason ("Eliason") granted an extension of time for Lamere to respond to the discovery requests until August 28, 2000. Unti did not send Lamere a copy of that order, nor did he tell him about it.

23. On August 28, 2000, Lumsden served a motion for a second extension of time until September 18, 2000 for Lamere to respond. Neither Unti nor Lumsden called Lamere to tell him of the second motion for extension that was filed that day.

24. On August 29, 30 & 31, 2000, Lamere left messages for Unti requesting that Unti return his call, but Unti failed to promptly return any of these calls.

25. On August 30, 2000, the law firm defendant's attorneys served Unti with an objection to a second extension of time. In that motion, they told the Court that they would not have consented to a 10-day extension if they had known that the plaintiff would seek additional time. Defense counsel also complained about not being consulted about the request for an

extension prior to plaintiff's motion being served. Unti failed to send a copy of that objection to Lamere, and he did not promptly tell him about it.

26. On August 30, 2000, Lamere sent a fax to Unti advising him that he would be sending answers to the discovery requests to Unti piecemeal for his review and comment. Lamere also asked Unti to send him the drafts of plaintiff's discovery Unti had repeatedly represented that he was preparing.

27. On September 7, 2000, Eliason entered an order denying Lamere's request for an extension to September 18, 2000 and ordering Lamere to file his responses by September 1, 2000.

28. On September 10, 2000, unaware of what had transpired, Lamere faxed and mailed to Unti his request that Unti file another motion for an extension of time.

29. On September 12, 2000, Unti's paralegal responded to Lamere's request for what he believed would have been a second motion for extension of time with a faxed copy of Eliason's September 7, 2000 order that Unti's office had received on September 9, 2000. Unti's paralegal advised Lamere that, because Eliason's September 7, 2000 order had ruled that Lamere's discovery responses were due retroactively, Unti would seek clarification from Eliason.

30. On September 15, 2000, Lamere sent Unti by FedEx three sets of his responses to the defendants' requests for production of documents that included over 900 pages of paginated production in bound volumes, one for Unti and each of the defendants, for immediate service upon the defendants.

31. On September 20, 2000, Lamere sent Unti by FedEx verified responses to the discovery requests. Lamere sent additional responses and amended responses to the discovery requests over the next ten days.

32. On September 25, 2000, pursuant to Local Rule 26.1(c), the attorneys for the law firm defendant initiated a telephone conference concerning discovery that included Lumsden. Lumsden promised to send the discovery responses to defense counsel. All parties also agreed to file a joint motion to extend the discovery schedule.

33. Unti sent Lamere's document production to defense counsel on September 25, 2000 and sent Lamere's responses to the discovery requests to defense counsel on September 26, 2000.

34. On September 27, 2000, defense counsel served Unti with the defendants' joint motion for discovery sanctions based on the late delivery of Lamere's responses to the discovery requests. The joint motion asked the Court to consider dismissal of Lamere's sole remaining cause of action as an appropriate sanction.

35. Also on September 27, 2000, defense counsel served a joint motion to extend the deadline in the Rule 26 Report for the completion of discovery for 60 days due to the late receipt of Lamere's discovery responses.

36. On September 29, 2000, Lamere faxed a memo to Unti inquiring about the status of his draft of the plaintiff's discovery and reminding Unti of the October 31, 2000 deadline for completion of discovery.

37. When Unti did not respond to his memo, Lamere prepared two sets of interrogatories, production requests and requests for admissions and sent them to Unti for service upon the defendants.

38. On October 2 & 3, 2000, Lamere was able to speak with Unti for the first time since August 22, 2000. Unti told Lamere that there was an agreement among the parties for an extension of the discovery deadline. Unti told Lamere that he had served Lamere's discovery requests on the defendants. Unti did not tell Lamere of the defendants' motion for discovery sanctions, nor did Unti send Lamere a copy of the motion.

39. On October 20, 2000, Unti filed a Response to the Joint Motion for Discovery Sanctions ("response").

40. Unti failed to send Lamere a copy of the response and failed to tell him about it.

41. On October 24, 2000, pursuant to Local Rule 26.1(d), a telephone hearing was conducted on the joint motion of the defendants for discovery sanctions and the joint request to extend the discovery deadline.

42. On October 25, 2000, Unti told Lamere that the Magistrate had called a telephone conference to consider the joint request to extend the discovery deadline and had entered severe sanctions against Lamere.

43. Also on October 25, 2000, Unti sent Lamere a letter describing the sanctions that the Court had announced in the telephone conference, including, among other things, limiting Lamere to two fact-witness depositions to be completed by the end of November and relieving the defendants from answering any of Lamere's discovery.

44. On November 1, 2000, Lamere called Unti's office and spoke with Mathew Slotkin ("Slotkin"). Lamere asked Slotkin to send him copies of all documents from his file from and after June 2, 2000.

45. On November 2, 2000, Lamere flew to Durham to investigate court documents and land records and to meet with Unti. Lamere spoke with Slotkin to set up a meeting with Unti for 3:00 p.m. on November 3, 2000. Lamere asked Slotkin to have the requested documents copied and ready for him and asked him to attend the meeting Lamere had just scheduled with Unti.

46. On November 3, 2000, Lamere met with Unti and Lumsden, but Slotkin was not present. Unti advised Lamere that Slotkin was elsewhere and that he did not know whether Slotkin had made copies of any documents for Lamere. Lamere did not receive the requested documents at that meeting, but did receive them thereafter.

47. Unti believes that he did inform Lamere of the discovery deadline set forth in paragraph 19 and the motion set forth in paragraph 39, and would have testified to that effect if this matter had proceeded to hearing. However, since there is no telephone record or other contemporaneous document to support Unti's belief, Unti accepts these findings of fact to the contrary for the purposes of this Consent Findings of Fact and Order of Discipline.

THEREFORE, the plaintiff alleges that Unti's foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(b)(2) in that Unti violated the Revised Rules of Professional Conduct as follows:

- (a) By failing to promptly ensure that Lamere received a copy of the scheduling order, Unti failed to keep Lamere reasonably informed in violation of Rule 1.4(a).
- (b) By failing to tell Lamere that the motion for extension of time filed on his behalf on August 21, 2000 only sought a 10-day extension and that Lamere would only have until August 28, 2000 to respond to the discovery requests if the extension was granted, Unti failed to keep his client reasonably informed in violation of Rule 1.4(a).
- (c) By failing to send Lamere a copy of Magistrate Eliason's August 24, 2000 order or otherwise advise Lamere of the deadline for his discovery responses, Unti failed to keep his client reasonably informed in violation of Rule 1.4(a).
- (d) By failing to tell Lamere of the objection defense counsel served on August 30, 2000 to the motion for a second extension of time for Lamere to respond to the discovery requests, Unti failed to keep his client reasonably informed in violation of Rule 1.4(a).
- (e) By failing to prepare plaintiff's discovery for Lamere's review and supplementation, Unti failed to act with reasonable diligence and promptness in representing Lamere in violation of Rule 1.3.
- (f) By failing to promptly send Lamere a copy of the defendants' joint motion for discovery sanctions or otherwise tell Lamere of the joint motion, Unti failed to keep his client reasonably informed in violation of Rule 1.4(a).
- (g) By failing to tell Lamere of the response he filed on Lamere's behalf or send him a copy of the response, Unti failed to keep his client reasonably informed in violation of Rule 1.4(a).

- (h) By failing to tell Lamere of the telephone hearing that was held on the joint motion for discovery sanctions prior to the hearing, Unti failed to keep his client reasonably informed in violation of Rule 1.4(a).
- (i) There was insufficient evidence to support a finding of fact or a conclusion of law that Unti intentionally made any misrepresentation to Magistrate Eliason in the October 25, 2000 telephone hearing.

BASED UPON the foregoing Findings of Fact, the Conclusions of Law, and the evidence presented at the hearing, the hearing committee hereby makes the following:

#### FINDINGS AND CONCLUSIONS REGARDING DISCIPLINE

1. Unti's misconduct is aggravated by the following factors:
  - (a) Multiple offenses; and
  - (b) Substantial experience in the practice of law.
2. Unti's misconduct is mitigated by the following factor:
  - (a) Absence of a dishonest or selfish motive;
  - (b) No prior history of discipline; and
  - (c) Reimbursement made by Unti to Lamere for a portion of the legal fees and costs he subsequently incurred in pursuing his civil case.
3. The mitigating factors outweigh the aggravating factors.
4. Because Unti contributed to the imposition of sanctions in Lamere's civil case, Unti's conduct caused harm to Lamere. However, the protection of the public doesn't require a censure in this case.

BASED UPON the foregoing Findings and Conclusions Regarding Discipline and the consent of the parties, the hearing committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. The discipline to be imposed in this matter is a Reprimand. The Reprimand, of even date herewith, accompanies this Order.
2. Unti is taxed with the costs of this action as assessed by the Secretary, including travel and hotel costs the State Bar paid for Lamere of \$1,065.

Signed this the 13 <sup>April</sup> day of March 2005 with the knowledge and consent of the other members of the hearing committee.

F. Lane Williamson  
F. Lane Williamson, Chair  
Hearing Committee

CONSENTED TO:

A. Root Edmonson  
A. Root Edmonson  
Deputy Counsel

Jeffrey M. Young  
Jeffrey M. Young  
Counsel for the Defendant



NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
04 DHC 45

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

MICHAEL L. UNTI, Attorney,  
Defendant

REPRIMAND

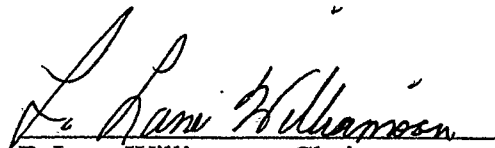
On March 11, 2005, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, John M. May, and Donald G. Willhoit. The hearing committee's Consent Findings of Fact, Conclusions of Law and Order of Discipline are entered contemporaneously herewith.

The hearing committee found that you had violated some of the Revised Rules of Professional Conduct, and ordered that you be reprimanded. A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Revised Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure. This document constitutes that reprimand.

While representing Richard Lamere in a civil action in federal court, you failed to prepare discovery to serve on the opposing parties in violation of Revised Rule 1.3. You also failed to keep Mr. Lamere reasonably informed at several important stages of the litigation in violation of Revised Rule 1.4(a).

The hearing committee of the Disciplinary Hearing Commission hereby reprimands you for your professional misconduct. The hearing committee hopes that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

Issued this the 13<sup>th</sup> day of April 2005.

  
F. Lane Williamson, Chair  
Hearing Committee