

2401

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 26

THE NORTH CAROLINA STATE BAR)
Plaintiff)
v.) FINDINGS OF FACT,
WALTER T. JOHNSON, JR, ATTORNEY) CONCLUSIONS OF LAW
Defendant) AND CONSENT ORDER
OF DISCIPLINE

THIS MATTER came on to be heard and was heard before a Hearing Committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Charles Davis and Lorraine Stephens pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0114(h) of the Rules and Regulations of the North Carolina State Bar. The Defendant, Walter T. Johnson, Jr., was represented by Henry E. Frye and W. Erwin Fuller, Jr. Carolin Bakewell represented the N.C. State Bar. Defendant has agreed to waive a formal hearing in the matter. All parties stipulate and agree to the findings of fact and conclusions of law recited in this order and to the discipline imposed. Further, the Defendant hereby waives his right to appeal this consent order or challenge the sufficiency of the findings and conclusions stated herein. Based upon the consent of the parties, the Hearing Committee hereby enters 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, Walter T. Johnson, Jr. (Johnson), was admitted to the North Carolina State Bar in 1964, 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 relevant hereto, Johnson was engaged in the practice of law in the City of Greensboro, North Carolina.

4. In February 1999, Johnson undertook to file a motion for appropriate relief on behalf of Charles Clark (Clark). Clark paid Johnson a \$3,800 fee for his services.

5. Johnson filed a motion for appropriate relief on Clark's behalf prior to July 30, 2001. The court ultimately denied the motion.

6. On or about July 30, 2001, Johnson agreed to file a petition for writ of certiorari with the appellate courts on Clark's behalf.

7. Johnson failed to file the petition for writ of certiorari or take other action to seek review of the court's order denying the motion for appropriate relief.

8. Johnson failed to refund any portion of the \$3,800 fee paid to him by Clark.

9. In 2001, Johnson undertook to represent Roderick V. Brown (Brown) in a civil action against Hiatt Trucking Co.

10. In 2001, Johnson filed a complaint against Hiatt Trucking Co. on Brown's behalf in Guilford County Superior Court.

11. Johnson did not conduct discovery or take other steps to adequately investigate and prepare Brown's case for trial.

12. On Nov. 16, 2001, the court scheduled the Hiatt Trucking Co. case for trial for Feb. 11, 2002.

13. On Jan. 16, 2002, Johnson dismissed Brown's pending civil action without prejudice without first consulting with or notifying Brown. Johnson subsequently timely refiled Brown's action without cost to Brown.

14. On Feb. 4, 2000, Johnson undertook to seek parole on behalf of Kalomo Ellis (Ellis), who was then an inmate with the N.C. Department of Corrections. Johnson agreed to seek a Mutual Agreement Parole Program (MAPP) contract for Ellis if parole was denied.

15. Ellis or his relatives paid Johnson a \$3,800 fee.

16. Ellis was denied parole in February 2000, shortly after Johnson undertook to represent him.

17. Johnson did not take timely steps to seek a MAPP contract for Ellis.

18. Johnson failed to communicate adequately with Ellis and failed to respond to his reasonable requests for information concerning the status of his case.

19. Johnson failed to return the unearned portion of the fee paid to him after Ellis discharged him in 2003.

20. On March 21, 2003, Ellis filed a grievance against Johnson with the North Carolina State Bar.

21. On March 29, 2003, the N.C. State Bar provided Johnson with a copy of Ellis' complaint and directed him to file a response within 15 days.

22. Johnson did not file a response to Ellis' complaint until May 1, 2003.

23. In 2002, Linda Davis-Thomas (Davis-Thomas), filed a petition with the North Carolina State Bar for assistance in resolving a fee dispute in which she was engaged with Johnson.

24. Johnson responded to Davis-Thomas' fee dispute petition and, on Oct. 30, 2002, agreed to refund \$2,100 to her in three monthly installments of \$700, beginning on Nov. 15, 2002.

25. Despite his promise to make monthly installments, Johnson failed to make any payments to Davis-Thomas on the agreed payment schedule.

26. On March 24, 2003, Davis-Thomas filed a grievance with the North Carolina State Bar, based upon Johnson's failure to abide by his Oct. 30, 2002 agreement.

27. On April 29, 2003, Johnson was served with a copy of Davis-Thomas' grievance and was directed to respond within 15 days.

28. Johnson did not file a written response to Davis-Thomas' grievance until June 6, 2003.

29. Johnson ultimately did make the full agreed fee refund to Davis-Thomas by a series of payments made during June - September 2003.

30. Prior to Aug. 1, 2000, Johnson undertook to file an appeal on behalf of Perry V. Knowles (Knowles), following Knowles' May 19, 2000 conviction of drug trafficking charges.

31. The brief filed by Johnson with the North Carolina Court of Appeals failed to contain appropriate references to the assignments of error and legal authority.

32. The N.C. Court of Appeals denied Knowles' appeal on Jan. 2, 2002.

33. Johnson failed to promptly notify Knowles of the Court of Appeals decision and failed to communicate with Knowles to Knowles' satisfaction while the appeal was pending. Johnson did provide some documents to Knowles or members of his family while the appeal was pending, but did not respond to all communications he received from Knowles.

34. In September 2001, Johnson undertook to represent Joseph Williams III (Williams) regarding Williams' civil action against Forsyth County arising from a stroke he suffered while incarcerated in the Forsyth County Jail.

35. Johnson failed to take effective action to investigate and pursue the claim against Forsyth County and failed to communicate adequately with Williams about the case.

Based upon the foregoing Findings of Fact, the Committee hereby enters the following:

CONCLUSIONS OF LAW

1. By failing to take effective action to seek appellate review of the denial of the motion for appropriate relief filed in Charles Clark's case, Johnson neglected a client's case in violation of Rule 1.3.

2. By failing to return the unearned portion of the \$3,800 fee paid to him by Clark and Kalomo Ellis, Johnson retained clearly excessive fees in violation of Rule 1.5.

3. By failing to take adequate steps to investigate and prepare Brown's claim against Hiatt Trucking Co. for trial and by failing to take steps to pursue Joseph Williams' claim against Forsyth County, Johnson neglected client matters in violation of Rule 1.3.

4. By dismissing the complaint in the Hiatt Trucking Co. case without first consulting with his client, Roderick Brown, Johnson failed to communicate with a client in violation of Rule 1.4(a)(2).

6. By failing to take prompt, effective steps to assist Ellis to obtain a MAPP contract, Johnson neglected a client matter in violation of Rule 1.3.

7. By failing to communicate adequately with Ellis and Williams and to respond to their reasonable requests for information about his case, Johnson failed to communicate with his clients in violation of Rule 1.4.

8. By failing to respond in a timely fashion to the grievances filed by Kalomo Ellis and Ms. Davis-Thomas, Johnson failed to file prompt responses to inquiries of a disciplinary authority in violation of Rule 8.1(b).

9. By refunding the agreed fee amount to Ms. Davis-Thomas at a time substantially later than contemplated by his Oct. 30, 2002 agreement, Johnson failed to participate in good faith in the fee dispute resolution process, in violation of Rule 1.5(f).

10. By filing a brief on Knowles' behalf that did not contain appropriate references to the assignments of error and did not cite legal authority in support of his argument, Johnson handled a legal matter which he knew or should have known that he was not competent to handle in violation of Rule 1.1.

11. By failing to keep Knowles advised of the status of the appeal and by failing to promptly notify him of the Court of Appeals' adverse opinion, Johnson failed to communicate with a client in violation of Rule 1.4.

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

FINDINGS REGARDING DISCIPLINE

1. Johnson's violations of the Revised Rules of Professional Conduct are aggravated by the following factors:

- a. Johnson engaged in a pattern of misconduct.
- b. Johnson violated multiple provisions of the Revised Rules of Professional Conduct.
- c. Johnson has been previously disciplined by the State Bar, including the issuance of a reprimand, an order of stayed suspension and an order actively suspending his law license.
- d. Johnson has substantial experience in the practice of law.
- e. Some of Johnson's conduct was motivated by a selfish motive.

2. Johnson's violations of the Revised Rules of Professional Conduct are mitigated by the following factors:

- a. Johnson expressed remorse and acknowledged responsibility for his violations of the Rules.

- b. Johnson presented substantial evidence of good character and reputation in his home community in the trial of N.C. State Bar v. Johnson, 03 DHC 1.
- c. The misconduct recited herein occurred at the same time as the violations of the Rules of Professional Conduct which are the subject of the order of discipline entered in N.C. State Bar v. Johnson, 03 DHC 1.
3. The aggravating factors outweigh the mitigating factors.
4. Johnson's misconduct has caused actual harm to a number of his clients and their families and has harmed the standing of the legal profession in the eyes of some members of the public.
5. Johnson's failure to respond in a timely fashion to the State Bar's letter of notice regarding the grievances filed by Ms. Davis-Thomas and Kalomo Ellis undermines the State Bar's ability to regulate attorneys and undermines the privilege of attorneys in this state to remain self-regulating.
6. An order actively suspending Johnson's law license is not required in this case, as Johnson's law license was suspended in N.C. State Bar v. Johnson, 03 DHC 1, and the order in that case contains sufficient provisions designed to safeguard the public and the standing of the bar.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Relevant to Discipline, the Hearing Committee hereby enters the following:

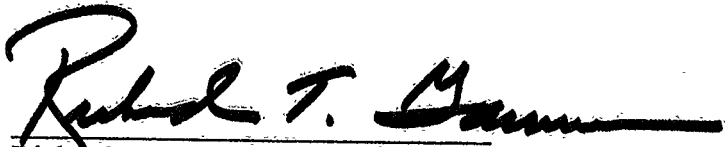
ORDER OF DISCIPLINE

1. The law license of the Defendant, Walter T. Johnson, Jr. is hereby suspended for a period of three years, effective 30 days from the service of the written order upon him. The entire suspension period is stayed for a period of five years upon proof of compliance with the following conditions:
 - a) Johnson complies with the terms and conditions of the order of discipline set out in N.C. State Bar v. Johnson, 03 DHC 1.
 - b) Johnson pays the costs of this proceeding within 30 days of receipt of service of the statement of costs upon by him by the Secretary of the N.C. State Bar.
 - c) Johnson complies with the laws of the State of North Carolina and of the United States.

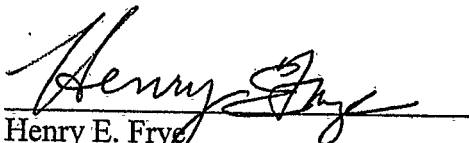
d). Johnson complies with the Revised Rules of Professional Conduct.

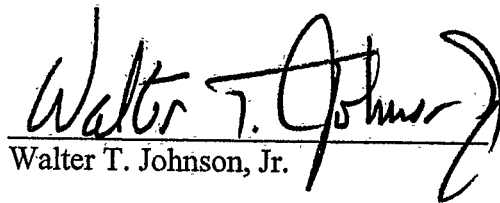
This the 13th day of ~~December~~ ^{February}, 2008.

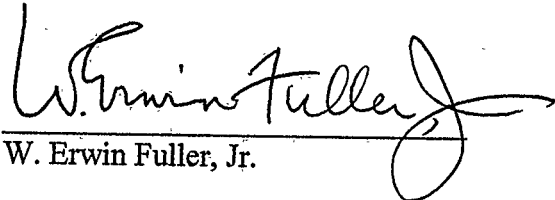
Signed by the Hearing Committee Chair with the consent of the Hearing Committee:


Richard T. Gammon, Chair

Seen and agreed to:


Henry E. Frye


Walter T. Johnson, Jr.


W. Erwin Fuller, Jr.


Carolin Bakewell