

WAKE COUNTY
NORTH CAROLINA



3432
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
01 DHC 21

THE NORTH CAROLINA STATE BAR)
Plaintiff)

v.)

ROBERT L. PETERSEN, ATTORNEY)
Defendant)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

THIS MATTER came on to be heard and was heard by a duly assigned hearing committee of the Disciplinary Hearing Commission of the North Carolina State Bar composed of Richard T. Gammon, Chair; Carlyn Poole and Betty Ann Knudsen. Carolin Bakewell appeared for the North Carolina State Bar. The Defendant, Robert L. Petersen, did not appear and was not represented by counsel. Based upon the evidence introduced at trial and the arguments of counsel, 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, Robert L. Petersen (hereafter, Petersen), was admitted to the North Carolina State Bar in 1972, 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. Between June 1, 1995 and Feb. 3, 1999 Petersen was employed as a senior in-house attorney in AT&T's government markets division.

4. In 1997 a group of AT&T employees referred to as the Tiger Team were directed to conduct an internal review of the "flexibiller" billing system then used in AT&T's government markets division.

5. In late 1997, the Tiger Team produced an 80-page report, known as the Tiger Team Report, which discussed various problems with the flexibiller system.

6. In December 1997, Petersen was given a copy of the Tiger Team Report by his supervisor, Nathaniel Friends, and was directed to employ outside counsel to review the report from a legal standpoint.

7. In late 1997 or early 1998, the attorney whom Petersen retained to review the Tiger Team Report submitted a legal memorandum (known as the Thompson Memorandum) discussing various legal issues and problems arising from AT&T's use of the flexibiller system.

8. Petersen received copies of the Thompson Memorandum and the Tiger Team Report in the course and scope of his duties as in-house counsel for AT&T. Petersen was aware that both documents contained confidences of AT&T, that AT&T did not wish the information disclosed, and that disclosure of the documents could be damaging to the company.

9. In July 1998, about six months after the Thompson Memorandum was received, Petersen became impatient with AT&T's progress in addressing the problems with the flexibiller system. He anonymously sent a portion of the Tiger Team Report to the Defense Contract Audit Agency (DCAA).

10. In August 1998 Petersen became impatient with DCAA's investigation process and anonymously sent a portion of the Tiger Team Report to a General Kelley with the U.S. Army and to Mike Armstrong, Chief Executive Officer of AT&T.

11. Petersen did not attempt to discuss his concerns about the Tiger Team Report and the Thompson Memo with AT&T's security unit, audit department, or the president of the government markets division or AT&T's Chief Executive Officer, Mike Armstrong, before disclosing portions of the Tiger Team Report to the DCAA in July 1998.

12. By at least August 1998, AT&T began taking steps to deal with the concerns raised by the Tiger Team Report and the Thompson Memorandum.

13. Petersen was aware that AT&T had stopped using the flexibiller system no later than November 1998.

14. Petersen did not disclose copies of the Tiger Team Report or the Thompson Memorandum to any other individuals outside AT&T between Aug. 3, 1998 and Feb. 3, 1999.

15. On Feb. 3, 1999, Petersen resigned from his job at AT&T. At the time of his resignation, he signed an agreement which required him, among other things, not to disclose AT&T's confidences and to return all documents containing confidential information to AT&T.

16. Petersen and AT&T officials later disagreed whether Petersen was asked to resign because of poor job performance or whether he was fired because AT&T had discovered that Petersen disclosed company confidences to the Army and DCAA in the summer of 1998. It is not necessary to resolve that issue in the context of this disciplinary proceeding.

17. On Oct. 5, 1999, approximately eight months after he left AT&T, Petersen wrote a letter to Armstrong and requested his assistance in finding new employment. Petersen attached copies of portions of the Thompson Memo and the Tiger Team Report to his letter and stated that he was entitled to disclose the documents because he claimed they had been delivered to him in July 1999 along with other personal property from his office.

18. Also on Oct. 5, 1999, Petersen left a voice message on the telephone of Dan Stark, another high-ranking AT&T official. In the message, Petersen advised Stark that he had asked for Armstrong's help in finding a new job and complained that he had been mistreated by AT&T in various respects.

19. On Oct. 15, 1999, Petersen left another voice message on Stark's telephone, indicating that he had disclosed portions of the Tiger Team Report to his parents, his in-laws and various friends because he had not received a prompt response to his demand for assistance. He also advised that he would reveal portions of the report to the media and others if AT&T did not respond to the demands set out in his Oct. 5, 1999 letter to Armstrong.

20. On Oct. 17, 1999, Petersen left a third message on Stark's phone. This time he indicated that he was being considered for a job at Newport News Shipbuilding Company and would make no further disclosures of AT&T documents if Armstrong gave him a positive job recommendation.

21. On Oct. 20, 1999, Petersen left a fourth voice mail message for Stark. In this message, he stated that, because AT&T had not responded to his earlier messages, he would be meeting with the Department of Defense, the press "and probably Justice, next week."

22. In December 1999, AT&T filed an injunction proceeding in federal court, seeking to bar Petersen from revealing further confidential information.

23. On Jan. 11, 2000, the parties entered into a consent order of injunction in the federal suit. In the consent order Petersen agreed to return all documents relating to AT&T to his former client and not to disclose any additional confidential information or documents.

24. In January 2000, after he had agreed to sign the consent order but before it was signed and filed, Petersen made additional disclosures of AT&T confidences to various friends and relatives.

25. On Jan. 13, 2000, Petersen revealed confidences of AT&T in a call to the Department of Defense "hotline."

26. In April and May 2000, Petersen revealed AT&T confidences to the Department of Defense and the DCAA and made further communications to AT&T in which he threatened to make disclosures to a senator, the media and the Securities and Exchange Commission.

27. In November 2000, Petersen signed a consent order before the Texas State Bar, whereby he admitted that he had revealed confidences of AT&T in violation of Texas' Rules of Professional Conduct. The Texas consent order imposed a reprimand.

28. In January 2001, Petersen attended a show cause hearing in the federal injunction proceeding. During the hearing, Petersen falsely stated that he had not divulged any documents containing AT&T confidences after the Jan. 11, 2000 consent order had been entered.

29. On Jan. 9, 2001, the federal court entered an order holding Petersen in contempt for disclosing AT&T confidences in violation of the Jan. 11, 2000 consent injunction.

30. After Petersen was held in contempt, he continued to disclose AT&T confidences and to threaten AT&T officials with further disclosures up to and through April 2002.

31. In May 2002, after formal disciplinary proceedings had been filed against him before the Virginia and North Carolina State Bars, Petersen left a handwritten note in Friends' mailbox in which he stated, among other things, that "because of you, I can no longer afford such a nice place. Just want you to fully understand - either my situation is going to change soon or your situation is going to change soon."

32. Following receipt of this note, Friends was forced to retain counsel and obtain an injunction from the Fairfax County courts, enjoining Petersen from contacting him or any other AT&T employee.

33. On July 26, 2002, the Virginia State Bar disciplinary hearing was held. The Virginia State Bar entered an order disbarring Petersen on or about Aug. 9, 2002.

34. On Feb. 4, 2002, Petersen was properly served with the N.C. State Bar's Summons and Complaint herein.

35. On Feb. 12, 2002, Petersen filed an Answer herein.

36. Thereafter, the State Bar served interrogatories and requests for production of documents upon Petersen. Petersen objected to some of the State Bar's discovery requests and the State Bar agreed to modify the scope of its discovery. During a hearing held by telephone conference call on April 10, 2002, Petersen agreed to respond to the discovery requests, as modified. However, Petersen failed to respond to the discovery requests.

37. On May 6, 2002, the Chair of the Disciplinary Hearing Committee entered an order directing Petersen to respond to discovery questions propounded by the N.C. State Bar, no later than May 16, 2002.

38. Petersen failed to comply with the Chair's discovery order and, on June 14, 2002, an order was entered, striking his Answer and entering his default, pursuant to N.C. Civ. Pro. Rule 37(b).

39. In light of the entry of default, all of the allegations in the State Bar's complaint have been deemed admitted.

40. It is not necessary for the hearing committee to determine whether copies of the Tiger Team Report and Thompson Memo were among the documents delivered by AT&T to Petersen in July 1999. Petersen first obtained possession of the documents and became privy to the information contained in them, while he was still in-house counsel for AT&T. AT&T never consented to the disclosure of the documents and Petersen's obligation to keep AT&T confidences continued after his employment with AT&T ceased.

41. Although Petersen has contended that his disclosure of AT&T confidences was necessary to prevent commission of a "crime" by his client and was therefore permitted pursuant to Rule 1.6(c)(4), his conduct and in particular, his messages and letters to AT&T officials establish that his real purpose was to obtain "redress" and revenge for perceived wrongs done to him by AT&T.

Based upon the following Findings of Fact, the hearing committee hereby enters the following:

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission of the N.C. State Bar has jurisdiction over the subject of this action and over the person of the Defendant, Robert L. Petersen, Jr.

2. By revealing confidential information of AT&T to third parties without AT&T's consent, Petersen disclosed confidential client information in violation of Rule 1.6(c)(1) of the Revised Rules of Professional Conduct.

3. By threatening to reveal confidential information of his former client, AT&T, to third parties for the purpose of pressuring AT&T to assist him in finding employment and by violating the federal court order, Petersen engaged in conduct prejudicial to the administration of justice, in violation of Revised Rule 8.4(d) and used client confidences for his advantage without AT&T's consent, in violation of Rule 1.6(c)(3).

Based upon the evidence herein, the Hearing Committee also makes the following

ADDITIONAL FINDINGS OF FACT RELEVANT TO DISCIPLINE

1. The hearing committee finds the following aggravating factors are present:

- a. dishonest or selfish motive;
- b. multiple violations of the Revised Rules of Professional Conduct;
- c. a pattern of misconduct;
- d. bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency;
- e. refusal to acknowledge wrongful nature of conduct;
- f. substantial experience in the practice of law;

2. The hearing committee found the following mitigating factor:

- a. absence of prior disciplinary record.

3. The aggravating factors substantially outweigh the mitigating factor.

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

ORDER OF DISCIPLINE

1. The Defendant, Robert L. Petersen, Jr. is hereby DISBARRED from the practice of law in North Carolina.
2. Robert L. Petersen Jr., shall pay the costs of this proceeding.

Signed by the Chair of the Hearing Committee with the consent of the other hearing committee members.

This the 18th day of September, 2002.



Richard T. Gammon, Chair
Disciplinary Hearing Commission