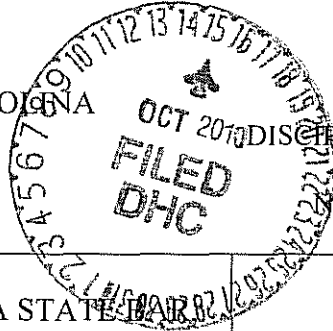


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

FREDRICK R. PIERCE, Attorney,

Defendant

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

This matter was heard on August 27, 2010 before a hearing panel of the Disciplinary Hearing Commission composed of Sharon Alexander, Chair, Harriett T. Smalls and Joe Castro. Brian P.D. Oten appeared on behalf of Plaintiff, the North Carolina State Bar. Defendant, Fredrick R. Pierce was not present at the hearing and was not represented by counsel.

Based upon the pleadings and admissions pursuant to 27 N.C.A.C. 1B § .0114(f) and Rule 8(d) of the Rules of Civil Procedure, as well as the evidence presented at the hearing, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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. Defendant, Fredrick R. Pierce ("Defendant" or "Pierce"), was admitted to the North Carolina State Bar on March 24, 2001, 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 part of the relevant periods referred to herein, Pierce was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. As of February 27, 2009, Pierce was suspended from the active practice of law in the State of North Carolina pursuant to the Order of Discipline issued by the Disciplinary Hearing Commission in case number 08 DHC 3 dated January 26, 2009 (hereinafter "08 DHC 3").

5. The complaint in this action was filed on April 19, 2010.

6. Pierce was served with the summons and complaint on April 22, 2010.

7. Pierce failed to file an answer or any responsive pleading by the deadline established by Rule 4 of the North Carolina Rules of Civil Procedure and 27 N.C. Admin. Code 1B § .0114(e).

8. Upon Plaintiff's motion, default was entered against Pierce by the Secretary of the North Carolina State Bar on June 1, 2010.

9. Upon Plaintiff's motion, judgment by default was entered against Pierce by the Chair of this hearing panel on August 27, 2010.

10. In or around April 2008, Anthony Bryant ("Bryant") retained Pierce for representation concerning several traffic citations. Bryant paid Pierce \$2000 for the representation.

11. In or around June 2008, Pierce indicated to Bryant that he had resolved all of Bryant's traffic citations.

12. Bryant requested copies of any court receipts evidencing Pierce's resolution of the traffic citations. Pierce was unable to produce any court receipts as requested.

13. Bryant subsequently contacted the North Carolina Division of Motor Vehicles ("NCDMV") and discovered that his traffic citations were still outstanding.

14. Bryant left several messages with Pierce requesting a full refund of the \$2000 he had previously paid for the representation and expressing his desire to retain new counsel.

15. Pierce failed to return Bryant's calls and did not refund Bryant's \$2000.

16. On August 8, 2008, Bryant filed a Petition for Resolution of Disputed Fee ("Bryant fee dispute") with the State Bar, file no. 08FD0471.

17. On August 11, 2008, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Pierce regarding the Bryant fee dispute by certified mail. On August 12, 2008, the Notification was returned to the State Bar marked "unclaimed." On August 13, 2008, the State Bar sent and Pierce received the Notification by facsimile.

18. On August 15, 2008, Pierce agreed to refund Bryant \$1,400 of the \$2000. Pierce refunded Bryant \$700 but failed to refund the remainder of the agreed upon amount.

19. In or around October 2008, Bryant obtained a judgment against Pierce in Wake County District Court, file no. 08 CVD 16081, in the amount of \$700 after Pierce failed to appear at an October 13, 2008 hearing in the matter.

20. On or about January 7, 2009, Bryant filed a grievance with the State Bar against Pierce, grievance file no. 09G0014.

21. On or about July 13, 2009, the State Bar sent a Letter of Notice to Pierce by certified mail regarding grievance file no. 09G0014. Pierce failed to accept service of the Letter of Notice.

22. On or about October 20, 2009, a State Bar investigator located and served Pierce with the Letter of Notice regarding file no. 09G0014. Pierce was required to respond to the Letter of Notice within fifteen days of receiving the letter.

23. Pierce failed to respond to the Letter of Notice regarding grievance file no. 09G0014 within the fifteen day period as required.

24. Pierce did not fully refund the remaining amount owed to Bryant.

25. In or around August 2008, Christopher Hopkins ("Hopkins") retained Pierce for representation in a criminal matter. Pierce charged Hopkins \$7500 for the representation, of which Hopkins paid \$750 for Pierce to begin working on his matter.

26. After being retained, Pierce failed to meet with or speak to Hopkins about his matter. Pierce also failed to appear at a December 4, 2008 court hearing and never informed the court that he was Hopkins's attorney of record.

27. Subsequently, in December 2008, Hopkins terminated Pierce's representation based upon Pierce's failure to contact him over a period of approximately four months.

28. On or about December 18, 2008, Hopkins filed a Petition for Resolution of Disputed Fee ("Hopkins fee dispute") with the State Bar, file no. 08FD0773.

29. On or about January 2, 2009, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Pierce regarding the Hopkins fee dispute by certified mail. Pierce received this Notification on January 24, 2009 and was required to respond within fifteen days of receipt.

30. Pierce failed to respond to the Notification of Mandatory Fee Dispute Resolution within the fifteen day period as required.

31. On or about February 16, 2009, the State Bar opened a grievance against Pierce for his failure to participate in the Hopkins fee dispute, grievance file no. 09G0165.

32. On or about May 1, 2009, May 27, 2009 and July 10, 2009, the State Bar sent a Letter of Notice to Pierce by certified mail regarding grievance file no. 09G0165. Each Letter of Notice was returned to the State Bar marked “unclaimed.”

33. On or about October 20, 2009, a State Bar investigator located and served Pierce with the Letter of Notice regarding file no. 09G0165. Pierce was required to respond to the Letter of Notice within fifteen days of receiving the letter.

34. Pierce failed to respond to the Letter of Notice regarding grievance file no. 09G0165 within the fifteen day period as required.

35. In or around November 2006, Cynthia Parker (“Parker”) retained Pierce for representation concerning traffic citations. Parker paid Pierce \$300 for the representation.

36. Pierce initially spoke with Parker several times and indicated that he would resolve the citations. However, Pierce eventually stopped communicating with Parker and failed to return many of Parker’s telephone messages requesting a status update on her case.

37. Between November 2006 and January 2009, Pierce failed to take any action on Parker’s behalf and failed to resolve the matters for which he was retained.

38. On or about January 16, 2009, Parker filed a Petition for Resolution of Disputed Fee (“Parker fee dispute”) with the State Bar, file no. 09FD0029.

39. On or about January 16, 2009, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Pierce regarding the Parker fee dispute by certified mail. Pierce received this Notification on January 21, 2009 and was required to respond within fifteen days of receipt.

40. Pierce failed to respond to the Notification of Mandatory Fee Dispute Resolution within the fifteen day period as required.

41. On or about February 16, 2009, the State Bar opened a grievance against Pierce for his failure to participate in the Parker fee dispute, grievance file no. 09G0166.

42. On or about May 22, 2009, the State Bar sent a Letter of Notice to Pierce by certified mail regarding grievance file no. 09G0166. Pierce accepted this Letter of Notice on May 23, 2009 and was required to respond within fifteen days of receiving the letter.

43. Pierce failed to respond to the Letter of Notice regarding grievance file no. 09G0166 within the fifteen day period as required.

44. On or about June 23, 2009, the State Bar sent Pierce a follow-up letter regarding grievance file no. 09G0166 and required Pierce to submit his response to the grievance by July 3, 2009.

45. Pierce failed to respond to the grievance by the July 3, 2009 deadline.

46. On or about October 20, 2009, a State Bar investigator located and served Pierce with the June 23, 2009 follow-up letter regarding grievance file no. 09G0166. Pierce was required to submit his response within fifteen days of receiving the letter.

47. Pierce failed to respond within the fifteen day period as required.

48. In or around June 2008, Eric Cooley ("Cooley") retained Pierce for representation in various criminal matters.

49. After Pierce failed to provide a status update to Cooley, Cooley appeared at Pierce's office to inquire about the status of his case. Pierce informed Cooley that he had resolved Cooley's various criminal matters. Pierce further informed Cooley that he could now apply for a driver's license.

50. Cooley was informed by the NCDMV that the outstanding criminal matters for which Cooley retained Pierce had not been resolved.

51. Cooley relayed the information obtained from the NCDMV to Pierce, who stated the NCDMV was mistaken and blamed the clerk of court for the mistake. Pierce, however, failed to take any steps to correct the alleged error.

52. Cooley subsequently returned to Pierce's office on numerous occasions requesting a status update, and Pierce continued to inform Cooley that the matter had been resolved when in fact the matter remained unresolved.

53. Pierce failed to perform any of the services for which he was retained.

54. On or about February 5, 2009, Cooley filed a Petition for Resolution of Disputed Fee ("Cooley fee dispute") with the State Bar, file no. 09FD0071.

55. On or about February 5, 2009, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Pierce regarding the Cooley fee dispute by certified mail. On March 5, 2009, the Notification was returned to the State Bar marked "unclaimed."

56. On or about February 25, 2009, the State Bar opened a grievance against Pierce for his failure to participate in the Cooley fee dispute, grievance file no. 09G0231.

57. On or about June 12, 2009, the State Bar sent a Letter of Notice to Pierce by certified mail regarding grievance file no. 09G0231. The Letter of Notice was returned to the State Bar marked "unclaimed."

58. On or about October 20, 2009, a State Bar investigator located and served Pierce with the Letter of Notice regarding file no. 09G0231. Pierce was required to respond to the Letter of Notice within fifteen days of receiving the letter.

59. Pierce failed to respond to the Letter of Notice regarding grievance file no. 09G0231 within the fifteen day period as required.

60. In 2007, William Stubbs ("Stubbs") retained Pierce for representation concerning several traffic violations. Stubbs paid Pierce for the representation.

61. Subsequently, Stubbs received notices from the NCDMV that he had failed to appear in court in the matters for which he retained Pierce.

62. Stubbs's driver's license was eventually suspended due to Pierce's failure to appear in court on his behalf.

63. Stubbs attempted to contact Pierce about the status of his case, but Pierce would not immediately return Stubbs's telephone calls. When Stubbs eventually did speak with Pierce, Pierce assured Stubbs that he would resolve Stubbs's traffic violations and Stubbs's suspended license.

64. Pierce failed to resolve Stubbs's traffic violations and Stubbs's suspended license.

65. Between December 2007 and October 2008, Stubbs was arrested four times for failure to appear as a result of Pierce's lack of representation.

66. Stubbs sent Pierce a letter via certified mail informing Pierce that the representation was terminated and demanding a refund of the money he had paid Pierce for the representation as well as reimbursement of expenses incurred resulting from Pierce's failure to appear in court on his behalf. Stubbs also requested a copy of his client file.

67. Pierce failed to respond to Stubbs's letter, failed to provide a refund, and failed to provide a copy of Stubbs's client file as requested.

68. On or about February 6, 2009, Stubbs filed a Petition for Resolution of Disputed Fee ("Stubbs fee dispute") with the State Bar, file no. 09FD0074.

69. On or about February 6, 2009, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Pierce regarding the Stubbs fee dispute by certified mail. On March 7, 2009, the Notification was returned to the State Bar marked "unclaimed."

70. On or about February 25, 2009, the State Bar opened a grievance against Pierce for his failure to participate in the Stubbs fee dispute, grievance file no. 09G0232.

71. On or about June 12, 2009, the State Bar sent a Letter of Notice to Pierce by certified mail regarding grievance file no. 09G0232. The Letter of Notice was returned to the State Bar marked "unclaimed."

72. On or about October 20, 2009, a State Bar investigator located and served Pierce with the Letter of Notice regarding file no. 09G0232. Pierce was required to respond to the Letter of Notice within fifteen days of receiving the letter.

73. Pierce failed to respond to the Letter of Notice regarding grievance file no. 09G0232 within the fifteen day period as required.

74. In or around March 2008, Brenda McConney ("McConney") retained Pierce to defend her in a civil matter after she was served with a complaint. McConney paid Pierce \$2,000 to begin the representation, with the expectation that another \$2,000 would be due before the representation concluded.

75. Pierce did not file an answer to the complaint on McConney's behalf.

76. McConney was subsequently served with a subpoena by the opposing party's counsel requiring her to produce and permit inspection of numerous documents in her possession. McConney provided Pierce with these documents with the expectation that Pierce would then answer the subpoena on her behalf and deliver the documents to the opposing counsel.

77. McConney later received a letter from opposing counsel dated November 13, 2008 stating that the clerk of court had entered default against McConney and that they intended to pursue a default judgment against her for her failure to answer the complaint. The letter also informed her that she had failed to respond to the subpoena.

78. McConney informed Pierce about the November 13 letter from opposing counsel, and Pierce assured her that he would resolve the matter and deliver the subpoenaed documents to the opposing counsel's office immediately.

79. McConney subsequently contacted opposing counsel herself and learned that Pierce had never contacted opposing counsel and informed them that he was representing McConney in the litigation.

80. McConney and opposing counsel then attempted to contact Pierce, but Pierce failed to return McConney's and opposing counsel's telephone calls.

81. On or about January 12, 2009, McConney filed a Petition for Resolution of Disputed Fee ("McConney fee dispute") with the State Bar, file no. 09FD0013.

82. On or about February 10, 2009, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Pierce regarding the McConney fee dispute by certified mail.

83. Pierce failed to respond to the Notification or to participate in the mandatory fee dispute resolution process

84. On or about March 11, 2009, the State Bar opened a grievance against Pierce for his failure to participate in the McConney fee dispute, grievance file no. 09G0304.

85. On or about June 12, 2009, the State Bar sent a Letter of Notice to Pierce by certified mail regarding grievance file no. 09G0304. The Letter of Notice was returned to the State Bar marked “unclaimed.”

86. On or about October 20, 2009, a State Bar investigator located and served Pierce with the Letter of Notice regarding file no. 09G0304. Pierce was required to respond to the Letter of Notice within fifteen days of receiving the letter.

87. Pierce failed to respond to the Letter of Notice regarding grievance file no. 09G0304 within the fifteen day period as required.

88. In or around July 2008, Darrius Culbreth (“Culbreth”) retained Pierce for representation in a criminal matter. Culbreth paid Pierce \$1200 for the representation.

89. Pierce subsequently informed Culbreth that he had resolved Culbreth’s criminal matter. This representation was false, in that Pierce had not resolved Culbreth’s matter.

90. Culbreth was later arrested for failure to appear at a July 30, 2008 court date in the matter for which he retained Pierce.

91. Culbreth and his mother attempted to contact Pierce by telephone and left numerous messages requesting Pierce return their calls and provide a status update on Culbreth’s case. Pierce failed to return Culbreth’s and Culbreth’s mother’s telephone messages.

92. On or about April 30, 2009, Culbreth filed a Petition for Resolution of Disputed Fee (“Culbreth fee dispute”) with the State Bar, file no. 09FD0240.

93. On or about April 30, 2009, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Pierce regarding the Culbreth fee dispute by certified mail. On or about May 16, 2009, the Notification was returned to the State Bar marked “unclaimed.”

94. On or about May 21, 2009, the State Bar opened a grievance against Pierce for his failure to participate in the Culbreth fee dispute, grievance file no. 09G0615.

95. On or about July 13, 2009, the State Bar sent a Letter of Notice to Pierce by certified mail regarding grievance file no. 09G0615.

96. On or about October 20, 2009, a State Bar investigator located and served Pierce with the Letter of Notice regarding file no. 09G0615. Pierce was required to respond to the Letter of Notice within fifteen days of receiving the letter.

97. Pierce failed to respond to the Letter of Notice regarding grievance file no. 09G0615 within the fifteen day period as required.

98. In or around October 2008, David Rosado-Vanegas (“Rosado”) retained Pierce for representation in a civil lawsuit. Rosado paid Pierce a \$300 retainer for the representation.

99. Pierce told Rosado that he would file an answer and counterclaim in the civil matter on his behalf.

100. In June 2009, Rosado was served with an Entry of Default in the civil matter due to Pierce’s failure to file an answer to the complaint.

101. Rosado promptly contacted Pierce for an explanation and Pierce assured him that the Entry of Default was a mistake and the error would be corrected.

102. In October 2009, Rosado received additional notice from opposing counsel concerning the entry of default entered against him.

103. Rosado again contacted Pierce for an explanation and Pierce assured him that he would resolve the matter. Pierce also asked Rosado to pay an additional \$250 legal fee to continue the representation.

104. On October 18, 2009, Rosado paid Pierce the \$250 legal fee by personal check no. 694.

105. On October 19, 2009, Pierce deposited Rosado’s check no. 694 into his bank account.

106. At the time Pierce accepted Rosado’s \$250 legal fee and deposited the fee into his bank account, Pierce was actively suspended from the practice of law in the State of North Carolina pursuant to 08 DHC 3.

107. Throughout the course of the representation, Pierce failed to inform Rosado about his suspension from the practice of law and held himself out to a client as being able to practice law when in fact he could not.

108. On October 30, 2009, grievance complaint 09G1267 was filed with the North Carolina State Bar relating to this matter.

109. On December 18, 2009, a State Bar investigator called the telephone number (919) 836-9444, which contained a message stating, “You have reached . . . the independent law offices of Fredrick R. Pierce” and provided instructions to “current client[s] of Fredrick Pierce” on how to contact Pierce without mentioning Pierce’s suspended status.

110. Pierce continued to hold himself out as able to practice law in North Carolina after his license was actively suspended.

111. On or about January 5, 2010, the State Bar sent a Letter of Notice to Pierce by certified mail regarding grievance file no. 09G1267. Pierce failed to accept service of the Letter of Notice.

Based on the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Fredrick R. Pierce, and the subject matter.

2. Defendant'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) and 84-28(b)(3) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to defend or resolve Bryant's traffic citations after receiving payment for representation and by not refunding Bryant's fee after failing to provide the legal services for which he was retained, Pierce failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);
- (b) By failing to respond to Bryant's inquiries and otherwise keep Bryant informed about the status of his case, Pierce failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);
- (c) By falsely informing Bryant that his matter had been resolved, Pierce engaged in conduct involving dishonesty, deceit or misrepresentation in violation of Rule 8.4(c);
- (d) By failing to respond to the State Bar's Letter of Notice regarding file no. 09G0014, Pierce failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (e) By failing to defend Hopkins in his criminal matter after receiving payment for representation and by not refunding Hopkins's fee after failing to provide the legal services for which he was retained, Pierce failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);
- (f) By failing to speak with Hopkins after being retained and otherwise failing to keep Hopkins informed about the status of his case, Pierce failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);

- (g) By failing to respond to the State Bar's notice concerning the Hopkins fee dispute, Pierce failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f);
- (h) By failing to respond to the State Bar's Letter of Notice regarding file no. 09G0165, Pierce failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (i) By failing to defend or resolve Parker's traffic citations after receiving payment for representation and by not refunding Parker's fee after failing to provide the legal services for which he was retained, Pierce failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);
- (j) By failing to respond to Parker's inquiries and otherwise keep Parker informed about the status of her case, Pierce failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);
- (k) By failing to respond to the State Bar's notice concerning the Parker fee dispute, Pierce failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f);
- (l) By failing to respond to the State Bar's Letter of Notice regarding file no. 09G0166, Pierce failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (m) By failing to defend or resolve Cooley's criminal matters and by not refunding Cooley's fee after failing to provide the legal services for which he was retained, Pierce failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (n) By failing to provide Cooley with an accurate status update concerning his case, Pierce failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (o) By falsely informing Cooley that his matter had been resolved, Pierce engaged in conduct involving dishonesty, deceit or misrepresentation in violation of Rule 8.4(c);
- (p) By failing to respond to the State Bar's Letter of Notice regarding file no. 09G0231, Pierce failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (q) By failing to pursue Stubbs's matter after receiving payment for representation and by not refunding Stubbs's fee after failing to provide

the legal services for which he was retained, Pierce failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);

- (r) By failing to timely respond to Stubbs's inquiries and otherwise keep Stubbs informed about the status of his case, Pierce failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);
- (s) By failing to provide Stubbs with a copy of his client file upon request, Pierce failed to surrender property to which his client was entitled in violation of Rule 1.16(d);
- (t) By failing to respond to the State Bar's Letter of Notice regarding file no. 09G0232, Pierce failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (u) By failing to act on McConney's behalf in the civil matter after receiving payment for representation and by not refunding McConney's fee after failing to provide the legal services for which he was retained, Pierce failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);
- (v) By failing to respond to McConney's inquiries and otherwise keep McConney informed about the status of her case, Pierce failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);
- (w) By failing to respond to the State Bar's Letter of Notice regarding file no. 09G0304, Pierce failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (x) By failing to defend Culbreth's criminal matter after receiving payment for representation and by not refunding Culbreth's fee after failing to provide the legal services for which he was retained, Pierce failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);
- (y) By failing to provide Culbreth with a status update concerning his case and by failing to respond to Culbreth's and Culbreth's mother's telephone messages, Pierce failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);

- (z) By falsely informing Culbreth that his matter had been resolved, Pierce engaged in conduct involving dishonesty, deceit or misrepresentation in violation of Rule 8.4(c);
- (aa) By failing to respond to the State Bar's Letter of Notice regarding file no. 09G0615, Pierce failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (bb) By failing to pursue Rosado's civil matter after receiving payment for representation and by not refunding Rosado's fee after failing to provide the legal services for which he was retained, Pierce failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);
- (cc) By failing to provide Rosado with an accurate status update concerning his case, Pierce failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and engaged in conduct involving dishonesty, deceit or misrepresentation in violation of Rule 8.4(c); and
- (dd) By accepting and depositing into his bank account a fee for legal services from Rosado and by holding himself out to both Rosado and the public as able to practice law while actively suspended from the practice of law, Pierce engaged in the unauthorized practice of law in violation of Rule 5.5.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Pierce's conduct – to wit: widespread and severe neglect of client matters, failure to adequately communicate with his clients, failure to resolve the matters for which he was retained, and repeated misrepresentations to his clients regarding the true status of his clients' legal matters – caused significant harm to his clients by impairing his clients' ability to achieve the goals of the representation and by subjecting his clients to unwanted consequences that were detrimental to their personal and professional lives. The consequences experienced by Pierce's clients included arrest warrants issued and executed due to Pierce's failure to appear in court, default judgments entered against clients for Pierce's failure to file an answer or participate in any way in his clients' respective civil matters, damaged credit, bankruptcy, lost paid legal fees, enormous frustration and stress.

2. Pierce's conduct caused significant harm to the public and the administration of justice by unnecessarily delaying resolution of his clients' pending cases and subjecting the cases to procedural resolution, rather than substantive or merit-based

resolution. Justice is achieved when all matters subjected to litigation are resolved on their merits and not by default or as a result of procedural problems such as those created by Pierce. Pierce's conduct not only harmed his clients' ability to resolve their respective legal matters, but also demonstrated an ongoing pattern of neglectful conduct.

3. Pierce's conduct caused significant harm to the profession. Pierce's neglect, failure to communicate with clients, failure to resolve the matters for which he was retained, and repeated misrepresentations regarding the true status of his clients' legal matters caused his clients, who were vulnerable to the extent that they were unfamiliar with the legal process and relied upon Pierce to protect their legal rights, to feel their trust had been betrayed. Several of Pierce's former clients expressed a sense of distrust of the legal profession in general due to Pierce's conduct.

4. Pierce's habitual neglect of his clients' matters has the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

5. Pierce's continued failure to respond to inquiries from the State Bar demonstrates a refusal to participate in the self-regulation process. Such conduct interferes with the State Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.

6. Pierce's conduct demonstrates an intentional and sometimes impulsive pattern of misrepresentations to his clients concerning the true status of their respective legal matters, and Pierce never made any attempt to correct the misrepresentations and/or fabrications he delivered to his clients concerning their respective legal matters.

7. Pierce has previously been disciplined by the Grievance Committee of the North Carolina State Bar as well as this Commission for neglecting multiple clients' legal matters and repeatedly failing to respond to the State Bar's inquiries during the fee dispute and grievance processes. Pierce's prior discipline concerning conduct similar to that contained in the present Order consists of the following:

- (a) a 2005 Admonition in grievance file no. 04G0987;
- (b) a 2006 stayed suspension in DHC case no. 05 DHC 42 which was activated in January 2009 for Defendant's failure to comply with the conditions of the stayed suspension; and
- (c) a 2009 active suspension in DHC case no. 08 DHC 3

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the different forms of discipline available to it. In addition, the hearing panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- (a) Prior disciplinary offenses in this state;
- (b) A pattern of misconduct;
- (c) Multiple offenses; and
- (d) Vulnerability of the victims, to wit: Defendant's clients named in the present complaint.

2. The hearing panel has also carefully considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and finds Defendant has engaged in the following conduct that compel consideration of and warrant disbarment of Defendant's license:

- (a) Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- (b) Impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts.

3. The hearing panel has also carefully considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors warrant disbarment of Defendant's license:

- (a) Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (b) Negative impact of Defendant's actions on his clients' or the public's perception of the profession;
- (c) Negative impact of Defendant's actions on the administration of justice;
- (d) Impairment of the client's ability to achieve the goals of the representation;
- (e) Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- (f) Multiple instances of failure to participate in the legal profession's self-regulation process.

4. The hearing panel has considered all other forms of discipline and concludes that any sanction less than disbarment would fail to acknowledge the

seriousness of the offenses committed by Defendant, would not adequately protect clients, the public, the administration of justice and the profession, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

5. Due to the nature and extent of Defendant's conduct, the significant harm caused by Defendant's conduct, and Defendant's extensive prior discipline for similar misconduct, and in the interest of protecting clients, the public, the administration of justice and the profession, this panel finds and concludes that disbarment is the only discipline that will adequately protect clients, the public, the administration of justice, and the profession from future transgressions by Defendant.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings and Conclusions Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. Fredrick R. Pierce is hereby DISBARRED from the practice of law in the State of North Carolina effective immediately.

2. Defendant previously failed to submit his law license and bar membership card as well as an affidavit certifying his compliance with the wind down provisions contained in 27 N.C.A.C. 1B § .0124 to the Secretary of the North Carolina State Bar as ordered by this Commission in case numbers 05 DHC 42 and 08 DHC 3. Accordingly, Defendant shall surrender his law license and bar membership card within 30 days after service of this order upon him and, to the extent not previously completed, comply with the provisions contained in 27 N.C.A.C. 1B § .0124. Because Defendant is presently suspended from the practice of law in the State of North Carolina, no wind down period is necessary.

3. Prior to seeking reinstatement, Defendant must demonstrate his reimbursement of all paid legal fees to the clients named in this Order as well as compliance with and satisfaction of the conditions listed in this Commission's previous January 2009 orders in case numbers 05 DHC 42 and 08 DHC 3.

4. All costs of this action are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service of the statement of costs by the Secretary.

12 Signed by the Chair with the consent of the other hearing panel members, this the day of October, 2010.



Sharon Alexander, Chair
Disciplinary Hearing Panel