

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 8

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

WARREN C. HODGES, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter being scheduled for hearing on August 25, 1989 before a hearing committee of the Disciplinary Hearing Commission composed of Maureen D. Murray, Chairman, Robert C. Bryan and Sam L. Beam; with A. Root Edmonson representing the North Carolina State Bar and Joe T. Knott, III representing Warren C. Hodges; and based upon the stipulations contained herein and 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, Warren C. Hodges, was admitted to the North Carolina State Bar on April 19, 1978, 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, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Winston-Salem, Forsyth County, North Carolina.

4. Defendant represented Davie Grading Company in a civil action filed in Davie County District Court against R.G.K. Inc., Paul N. Howard Company, and Insurance Company of North America, being file number 87 CVD 87.

5. On April 10, 1987, R.G.K., Inc., through its counsel, John E. Bugg (hereinafter Bugg), filed a Motion and Order for Extension of Time in the Davie County case. A copy was sent to Defendant.

6. On April 24, 1987, after settlement negotiations by telephone, Bugg sent a letter to Defendant setting forth his understanding of their telephone conversation and including a Stipulation and Dismissal with Prejudice of the Second Cause of Action to be filed in the Davie County case and a check for \$16,500.

7. On April 24, 1987, Defendant prepared a Motion to Intervene, Motion

to Consolidate for filing in Orange County Superior Court in 85 CVS 459 seeking to allow Davie Grading Company to consolidate its claim filed in 87 CVD 87 with the action pending in Orange County entitled R.G.K. Inc. v. Paul N. Howard Company and Insurance Company of North America.

8. On or about April 27, 1987, defendants Paul N. Howard Company and Insurance Company of North America filed a motion to dismiss in Davie County file 87 CVD 87, including a motion to dismiss for improper division.

9. On or about April 28, 1987, the attorney for Paul N. Howard Company and Insurance Company of North America filed a response in Orange County Superior Court file 85 CVS 459 to the motion to intervene and/or consolidate alleging, in part, improper division.

10. On or about April 30, 1987, Defendant filed a new lawsuit in Orange County Superior Court entitled Davie Grading Company v. R.G.K., Inc., Paul N. Howard Company, and Insurance Company of North America which was identical to the first cause of action filed in Davie County file 87 CVD 87 except for the addition of the last sentence to paragraph IV.

11. Also on or about April 30, 1987 Defendant moved in Orange County Superior court to intervene and consolidate 87 CVS 469 and 85 CVS 469.

12. On May 7, 1987, Defendant appeared in Orange County Superior Court and argued his motions to intervene and consolidate.

13. The motion to intervene was allowed by Judge Robert Hobgood in open court on May 7, 1987 except as to any claims made directly against Paul N. Howard Company or Insurance Company of North America.

14. On May 11, 1987 Defendant prepared a Motion of Voluntary Dismissal for all claims against R.G.K., Inc. for filing in Orange County Superior Court file 85 CVS 469 (erroneously denominated 87 CVD 469).

15. On May 11 or 12, 1987, Defendant filed the Notice of Voluntary Dismissal after Bugg had agreed to pay Davie Grading Company the amounts R.G.K. Inc. recovered from the defendants in Orange County file 85 CVS 469 for work Davie had performed as R.G.K., Inc.'s subcontractor.

16. In reliance on Defendant's agreement to have Bugg pursue Davie Grading's claims as pass through claims in the Orange County case, Bugg did not file an answer or other additional pleading in the Davie county case.

17. On June 1, 1987 Defendant prepared and filed an affidavit which he signed in support of his contemporaneous request for entry of R.G.K.'s default in Davie County file 87 CVD 87. His statement in the last paragraph of the affidavit that: "Time for filing answer or other pleading by Defendant, RGK, Inc. has expired, and no answer or other pleading has been filed by Defendant RGK, Inc. and Defendant RGK, Inc. has not otherwise appeared to defend the action", was misleading in that while RGK, Inc. had not filed any pleading in 87 CVD 87, Bugg certainly had "otherwise appeared to defend the action" in Orange County.

18. Defendant filed the affidavit and produced it to the Davie County Clerk of Superior Court, Delores C. Jordan, without any notice to Bugg and without any other disclosure to Jordan of Bugg's involvement in the case in Orange County.

19. On June 1, 1987, Delores C. Jordan signed the Entry of Default presented to her by Defendant.

20. On or about June 9, 1987, Defendant presented a Judgment to Chief District Court Judge Lester P. Martin, Jr. without giving Bugg any notice and without explaining any of Bugg's participation or any of the circumstances referred to above to the judge.

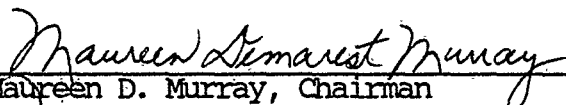
21. Although Defendant had subsequent communications with Bugg concerning the verdict Bugg obtained in Orange County and the Orange County defendants' appeal from that verdict, Defendant did not disclose to Bugg that he had secured a judgment in Davie County against Bugg's client. Defendant did not disclose the existence of the judgment before attempting to execute on that judgment on or about February 26, 1988.

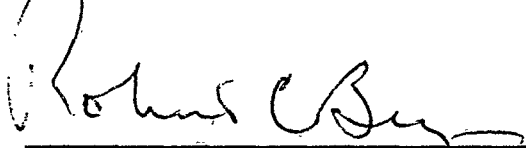
BASED UPON the foregoing Findings of Fact, the hearing committee enters the following Conclusions of Law:

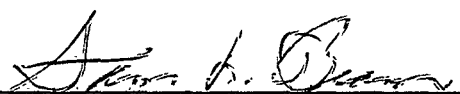
The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional conduct as follows:

- (a) By presenting his affidavit to the Clerk of Superior Court, Delores C. Jordan, without disclosing Bugg's involvement in the matter in Orange County, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D).
- (b) By securing the judgment signed by Judge Lester P. Martin, Jr. on June 9, 1987 based upon the entry of default obtained through use of his affidavit containing misleading information without any further explanation to Judge Martin concerning Bugg's involvement Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(C); and intentionally violated an established rule of procedure in violation of Rule 7.6(C)(7).

Signed by each of the members of the hearing committee without a hearing being held after circulation of this document commenced on August 24, 1989.


Maureen D. Murray, Chairman


Robert C. Bryan


Sam L. Beam

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Defendant

CONSENT ORDER
OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law of even date herewith, and further based upon the consent of the parties, the hearing committee enters the following Order of Discipline:

1. The appropriate discipline to be imposed in this case is for Defendant to be issued a Private Reprimand.
2. Defendant is taxed with the costs as assessed by the Secretary.

Signed by each of the members of the hearing committee without a hearing being held after circulation of this document commenced on August 24, 1989.

Maureen D. Murray
Maureen D. Murray, Chairman

Robert C. Bryan
Robert C. Bryan

Sam L. Beam
Sam L. Beam

Consented to:

A. Root Edmonson
A. Root Edmonson

Joe T. Knott, III
Joe T. Knott, III
Attorney for Defendant

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