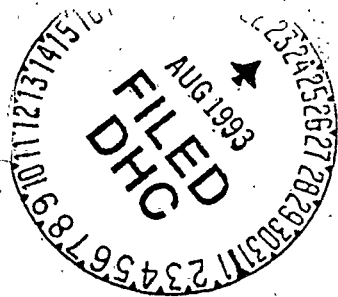


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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 4

THE NORTH CAROLINA STATE BAR,
Plaintiff
v.
MARSHALL McCALLUM, JR., ATTORNEY
Defendant

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

This matter came on to be heard and was heard on April 30, 1993 before a hearing committee of the Disciplinary Hearing Commission composed of Karen P. Boyle, chairman; Paul L. Jones, and Frank L. Boushee. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant, Marshall McCallum Jr. represented himself. Based upon the stipulations of the parties and the evidence admitted at the hearing, the committee finds the following facts by clear, cogent, and convincing evidence:

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, Marshall McCallum Jr. 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. 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 Mecklenburg County, Charlotte, North Carolina.
4. On May 1, 1992, Jean B. Cox hired the Defendant to obtain a divorce for her. The Defendant charged Ms. Cox \$100.00 for his attorney's fee and \$50.00 for costs. Ms. Cox paid the Defendant \$150.00 in cash.

5. The \$100.00 attorney's fee was not a non-refundable fee.
6. The Defendant prepared the divorce complaint for Ms. Cox, but he never filed the complaint in court.
7. Ms. Cox telephoned the Defendant on several occasions in an attempt to determine the status of her case. Defendant was in a very loose office sharing arrangement with lawyers and non-lawyer business people. He had no telephone service himself and no employees. The office had no particular person assigned to answer the telephone and no system of preserving and delivering messages. There was no evidence presented at the hearing that the Defendant actually received his calls or messages.
8. Ms. Cox wrote the Defendant on two occasions. In a June 15, 1992 letter to the Defendant, Ms. Cox asked the Defendant to attend to her divorce case as quickly as possible. By a letter dated June 26, 1992, Ms. Cox fired the Defendant and asked for a refund of the \$150.00 paid to him because he was not handling her case. The Defendant did not respond to either of Ms. Cox's letters. Defendant had moved his office several times during this period. Some files were lost during the office transition. There was no evidence presented that the Defendant actually received the letters.
9. The Defendant was grossly negligent in not communicating with his client and accounting for the \$150.00 fee for the divorce. The Defendant spent the \$150.00 and did not properly account for the money.
10. The Defendant has not refunded any of Ms. Cox's money.
11. The Defendant represented Joseph E. Mitchell in Mr. Mitchell's attempt to set aside alimony judgments entered against him. Defendant filed a motion in the cause on May 9, 1991. A hearing was held on May 13, 1991.
12. District court judge Samuel S. Stephenson denied Mitchell's motion in the cause on the following grounds: 1. the prior judgments entered in the alimony cases were not void; 2. Mitchell had an opportunity to present any defense before judgments were entered; 3. Mitchell's motion was barred pursuant to Rule 60(b)(2) because it was not filed within one year after the judgments were entered; and 4. Mitchell had not presented any evidence entitling him to relief pursuant to Rule 60(b)(4), (5) and (6).
13. On May 18, 1991, Mr. Mitchell paid the Defendant \$350.00 for the purchase of the transcript from the hearing.
14. The Defendant filed Notice of Appeal in Mr. Mitchell's action on July 3, 1991.
15. The Defendant filed the appeal late and as a result the appeal was not perfected. There had been a recent change

in the North Carolina Rules of Appellate Procedure, and Defendant erroneously relied on the date the order was filed as the date from which his appeal time began.

16. The Defendant spent the entire \$350.00 and did not properly account for the money or keep proper records regarding costs and fees. No transcript was obtained.

17. Mr. Mitchell telephoned the Defendant on several occasions in an attempt to determine the status of his appeal. For several months after the appeal was lost, the Defendant advised Mr. Mitchell that the appeal was pending. In April 1992, some 10 months after the appeal was lost, the Defendant told Mr. Mitchell that he had failed to file the appeal on time.

18. Mr. Mitchell made some telephone calls to the Defendant to determine the status of his appeal. There was no evidence that Defendant himself received the calls.

19. The Defendant has not refunded Mr. Mitchell's money.

20. Mr. Mitchell hired another attorney, Pamela J. Hendricks, to pursue the alimony matter and to get a refund of Mr. Mitchell's money. Ms. Hendricks talked with the Defendant by telephone on May 12, 1992 and followed up with letters dated May 12, 1992 and June 9, 1992. In these letters, Ms. Hendricks asked the Defendant to refund Mr. Mitchell's money and provide a copy of a motion filed in his case. The Defendant did not respond to Ms. Hendricks' letters.

21. At the time the Defendant represented Ms. Cox and Mr. Mitchell, he did not have a trust account, and did not understand the requirement that he maintain a trust account for unearned fees and other costs.

22. The Defendant did not place into a trust account any of the money he received from Ms. Cox or Mr. Mitchell.

23. The Defendant did not maintain the minimum records regarding funds received from a client as required by the Rules of Professional Conduct.

24. Jean B. Cox and Joseph E. Mitchell filed grievances against the Defendant with the N.C. State Bar. Both grievances were forwarded to the 26th Judicial District Grievance Committee (hereinafter "local grievance committee") for investigation as provided by Article IX, Section 2(B) of the Discipline and Disbarment Procedures of the N.C. State Bar.

25. Either Channing O. Richards, the chairman of the local grievance committee, or Mary V. Carrigan, the investigating attorney, wrote the Defendant on July 14, August 4, August 21, September 23, and October 1, 1992 about responding to the grievances. The Defendant did not respond to the inquiries of the local grievance committee.

Furthermore, Ms. Carrigan placed two telephone calls to the Defendant and left messages for him to return her calls. There is no evidence that Defendant himself received the calls.

26. The Defendant was grossly negligent in his law office management procedures. He had no trust account, no system for preserving and receiving messages, no accounting practices, and no adequate method of keeping clients and the North Carolina State Bar informed of his address.

27. The Defendant showed little knowledge of the Rules of Professional Conduct and his responsibility as a member of the bar, particularly in areas relating to client funds, trust accounts, and accountability.

Based upon the foregoing Findings of Fact, the hearing committee makes the following Conclusions of Law:

(a) By failing to maintain records of the unearned fee of \$150.00 paid by Ms. Cox and to maintain the fee in a trust account, the Defendant has failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(E).

(b) By failing to file the divorce complaint in court for Ms. Cox, the Defendant has failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(B)(3); failed to seek the lawful objectives of his client through reasonably available means permitted by law and the Rules of Professional Conduct in violation of Rule 7.1(A)(1); failed to carry out a contract of employment entered into with a client for professional services, in violation of Rule 7.1(A)(2); and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(A)(3).

(c) By failing to communicate with Ms. Cox, the Defendant has failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of Rule 6(B)(1) and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 6(B)(2).

(d) By not refunding the unearned part of the fee Ms. Cox paid him, the Defendant has failed to refund promptly any part of a fee paid in advance that has not been earned in violation of Rule 2.8(A)(3).

(e) By failing to account properly for the \$350.00 paid by Mr. Mitchell, the Defendant has failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(E).

(f) By failing to communicate with Mr. Mitchell about his case, the Defendant has failed to keep the client reasonably informed about the status of a matter and promptly comply

with reasonable requests for information in violation of Rule 6(B)(1) and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of Rule 6(B)(2).

(g) By failing to return Mr. Mitchell's money, the Defendant has failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(E).

(h) By not maintaining a trust account, the Defendant has violated Rule 10.1(A) and (B).

(i) By not keeping the minimum records regarding funds received and disbursed on behalf of clients as is required by the N.C. State Bar, the Defendant has violated Rule 10.2(C).

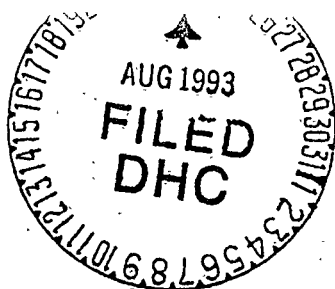
(j) By not depositing into a trust account the funds he received from Ms. Cox and Mr. Mitchell since the funds represented unearned attorney's fees and payment of expenses, the Defendant has violated Rule 10.1(C).

(k) By failing to respond to the N.C. State Bar regarding the grievances filed by Ms. Cox and Mr. Mitchell, the Defendant has knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(B).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 19th day of August, 1993, nunc pro tunc for June 30, 1993.


Karen P. Boyle, Chairman
Hearing Committee

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 4

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARSHALL McCALLUM, JR.,
Attorney

Defendant

ORDER OF DISCIPLINE

This cause was heard on April 30, 1993 by a hearing committee of the Disciplinary Hearing Commission consisting of Karen P. Boyle, chairman; Paul L. Jones, and Frank L. Boushee. In addition to the Findings of Fact and Conclusions of Law made following the evidentiary hearing, the committee makes additional Findings of Fact relative to aggravating and mitigating factors as follows:

ADDITIONAL FINDINGS OF FACT:

1. The following aggravating factors existed:

- (a) the Defendant's substantial experience in the practice of law;
- (b) the Defendant's conduct showed a pattern of misconduct;
- (c) the Defendant was charged with multiple offenses;
- (d) the Defendant showed an indifference to make restitution to Ms. Cox and Mr. Mitchell; and
- (e) the Defendant practiced law when he knew his license was suspended for nonpayment of dues.

2. The only mitigating factor was that Defendant had no prior disciplinary record.

Based upon the Findings of Fact and Conclusions of Law entered in this case and the further Findings of Fact set forth above, the hearing committee enters the following ORDER OF DISCIPLINE:

- 1. The Defendant is suspended from the practice of law for 5 years.

2. In addition to the requirements of Section 25(B)(3) of Article IX of the Discipline and Disbarment Procedures of the N.C. State Bar, the following requirements must be satisfied by the Defendant in order to be eligible for reinstatement of his license:

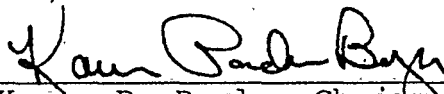
a. Payment of \$150 to Jean B. Cox and \$350 to Joseph Mitchell within 30 days of the effective date of this order of discipline, such payments to be mailed to bar counsel in this case and forwarded to Ms. Cox and Mr. Mitchell; and

b. Attainment of a passing grade on the professional responsibility or ethics examination required by the Board of Law Examiners of North Carolina for admission to the North Carolina Bar.

3. The Defendant shall comply with the provisions of Section 24 of Article IX of the Discipline and Disbarment Procedures of the N.C. State Bar.

4. The Defendant shall pay the costs of this proceeding.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee, this the 13th day of August, 1993, nunc pro tunc for June 30, 1993.



Karen P. Boyle, Chairman
Hearing Committee