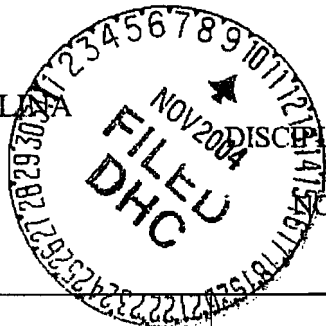


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
04 DHC 20

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

RICHARD V. BROADNAX, Attorney,

Defendant

CORRECTED  
ORDER OF DISCIPLINE

This matter was heard on August 23, 2004 before a hearing committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair, T. Richard Kane, and Lorraine Stephens. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Defendant, Richard V. Broadnax, did not appear and was not represented. Based upon the pleadings and the evidence introduced at the hearing, 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. Defendant, Richard V. Broadnax ("Defendant"), was admitted to the North Carolina State Bar in 1997, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Reidsville, Rockingham County, North Carolina.

4. Defendant was properly served with process and the hearing was held with due notice to all parties.

5. In about December 2002, Jason M. Miles ("Miles") hired Defendant to represent him in a child custody/visitation case and paid Defendant an advance fee of \$400.00.
6. On December 27, 2002 Defendant filed a complaint seeking custody or reasonable visitation on Miles' behalf.
7. The opposing party filed an answer and served interrogatories upon Defendant.
8. Defendant did not answer the interrogatories in a timely manner nor did he obtain consent from the opposing party to delay answering the interrogatories.
9. Opposing party filed a motion to compel discovery and for attorney's fees. The motion was calendared for the June 2, 2003 civil court session, with a calendar call on May 27, 2003.
10. Defendant failed to appear at calendar call on May 27, 2003. The hearing was set for June 12, 2003. Defendant failed to appear for the hearing on June 12, 2003.
11. The Court granted opposing party's motion and entered an order on July 14, 2003 requiring Miles to pay opposing counsel \$1,600.00 as a sanction for failure to participate in discovery.
12. Miles filed a grievance with the State Bar on or about November 25, 2003. On or about December 22, 2003, Defendant received a Letter of Notice from the Chair of the Grievance Committee of the North Carolina State Bar regarding the grievance filed by Miles against him.
13. Defendant was required to respond within fifteen (15) days of receipt pursuant to the terms of the Letter of Notice and Rule .0112(c) of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C. Admin. Code 1B § .0112(c)).
14. Defendant failed to respond to the Letter of Notice within fifteen days as required.
15. In or about September 2000 Latonya Rice ("Rice") hired Defendant for a family law case involving changing the last name of her grandchild.
16. On or about October 19, 2003 Rice filed a fee dispute with the State Bar.
17. Defendant was notified of the fee dispute by certified mail on or about October 27, 2003 and was ordered to respond within 15 days.
18. Defendant failed to respond or participate in the fee dispute program.

19. Based on Defendant's failure to respond or participate in the fee dispute program, the State Bar opened a grievance file. On or about February 19, 2004 Defendant received a Letter of Notice from the Chair of the Grievance Committee of the North Carolina State Bar regarding the fee dispute filed by Rice.

20. Defendant was required to respond within fifteen (15) days of receipt pursuant to the terms of the Letter of Notice and Rule .0112(c) of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C. Admin. Code 1B § .0112(c)).

21. Defendant failed to respond to the Letter of Notice within fifteen days as required.

22. On or about June 12, 2002 Margaret M. Steadwell ("Steadwell") hired Defendant to help her regain her driving privileges.

23. On or about October 27, 2003 Steadwell filed a fee dispute with the State Bar.

24. Defendant was notified of the fee dispute by certified mail on or about October 31, 2003 and was ordered to respond within 15 days.

25. Defendant failed to respond or participate in the fee dispute program.

26. Based on Defendant's failure to respond or participate in the fee dispute program, the State Bar opened a grievance file. On or about March 3, 2004 Defendant received a Letter of Notice from the Chair of the Grievance Committee of the North Carolina State Bar regarding the fee dispute filed by Steadwell.

27. Defendant was required to respond within fifteen (15) days of receipt pursuant to the terms of the Letter of Notice and Rule .0112(c) of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C. Admin. Code 1B § .0112(c)).

28. Defendant failed to respond to the Letter of Notice within fifteen days as required.

### CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Richard V. Broadnax, and the subject matter.

2. The 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) as follows:

- a. By failing to respond to discovery requests on behalf of Jason Miles in a timely manner and failing to appear at the hearing on the motion to compel discovery, Defendant neglected a client matter in violation of Rule 1.3.
- b. By failing to respond to the Letters of Notice issued by the Chair of the Grievance Committee concerning Jason Miles, Margaret Steadwell, and Latonya Rice within the deadlines established in the Letters of Notice and by the rules, Defendant failed to timely respond to inquiries by the Bar in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct and N.C. Gen. Stat. § 84-28(b)(3).
- c. By failing to respond to the notices of petition for fee dispute resolution for fee disputes filed by Margaret Steadwell and Latonya Rice, Defendant failed to participate in good faith with the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning appropriate discipline, the hearing committee hereby makes additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The Committee finds the following aggravating factors:
  - a. Defendant has prior disciplinary offenses, as follows: Defendant received a reprimand dated August 6, 2003 for failing to respond to the North Carolina State Bar's letter of notice and Defendant received an admonition dated February 9, 2004 for neglecting a client matter, failing to respond to the North Carolina State Bar's letter of notice, and failing to participate in the State Bar's fee dispute resolution program;
  - b. Defendant has engaged in a pattern of misconduct;
  - c. Defendant has engaged in multiple offenses;
  - d. Defendant's victim, Jason Miles, was vulnerable in that he lived in Iowa and had to fly to North Carolina for any proceedings; and
  - e. Defendant showed indifference to making restitution.
2. The Defendant's misconduct is mitigated by the following factor:
  - a. Absence of a dishonest or selfish motive.

3. The aggravating factors outweigh the mitigating factors.

4. Defendant has significantly harmed his client, Jason Miles, by failing to refund the unearned portion of the fee paid by Miles to Defendant and by failing to pay the \$1,600 sanction imposed upon Miles for Defendant's failure to comply with discovery.

5. Defendant's failure to participate in mandatory fee arbitration and failure to respond to the Letters of Notice from the State Bar interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.

6. This DHC Committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the harm caused by the conduct of the Defendant to the public and to the administration of justice.

7. This DHC Committee finds Defendant's conduct caused significant harm and significant potential harm to clients, to the administration of justice, to the profession, and to members of the public, and that a discipline more severe than public censure or reprimand is necessary to protect the public.

8. Entry of an order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would be inconsistent with orders of discipline entered by this body in similar cases and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

9. For those reasons, this DHC Committee believes and so finds that an Order calling for a discipline short of a suspension of the Defendant's law license would not be appropriate.

Based upon the foregoing findings and conclusions of law and the arguments of the parties, the hearing committee hereby enters the following

#### ORDER OF DISCIPLINE

1. The license of the Defendant, Richard V. Broadnax, is hereby suspended for three years, beginning 30 days from the date of service of this order upon the Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. Within 15 days of the effective date of this order Defendant shall provide the State Bar with an address at which clients seeking return of files can obtain such files and shall promptly return all files to his clients upon request.

5. After serving one year of the active suspension of his license, Defendant may apply for reinstatement upon filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:

- a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules.
- b. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him.
- c. That within 60 days of service of this order Defendant paid the \$50 in costs owed in grievance files 03G1055 and 03G1217 in which he received an admonition.
- d. That within 60 days of service of this order Defendant paid \$1,600 to Jason Miles who is under court order to pay \$1,600 as a sanction in Jason Miles v. Ivy Williams, 02 CVD 12825, Guilford County District Court Civil Division in an order filed on July 15, 2003.
- e. That within 60 days of service of this order Defendant refunded to Jason Miles the advance fee of \$400 paid to him by Miles.
- f. That not less than 60 days before seeking reinstatement Defendant was evaluated by the Lawyers Assistance Program or by a psychiatrist approved by the State Bar at his own expense, and that he complied and continues to comply with any and all treatment recommendations of the LAP program or the psychiatrist. The medical evaluation and treatment shall be obtained at Defendant's expense.

- g. That within ten days of obtaining the evaluation described above, Defendant signed the appropriate releases and medical authorizations and provided the releases to the North Carolina State Bar Office of Counsel, authorizing counsel to speak with his psychiatrist or the LAP personnel and obtain copies of his medical records from the psychiatrist and/or other records from LAP. Defendant shall not revoke these releases.
- h. That Defendant complied and continues to comply with any and all requests by the North Carolina State Bar Office of Counsel for any reports, medical records, LAP evaluations or mental health evaluations at his expense
- i. That he has kept the North Carolina State Bar Membership Department advised of his current business and home address.
- j. That he has responded to all communications from the North Carolina State Bar received after the effective date of this order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner.
- k. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state.
- l. That he paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension.
- m. That he has participated in the North Carolina State Bar's fee dispute resolution process for any subsequent petition received after the effective date of this order, participated in good faith and refunded all fees that were determined to be subject to refund by the mediation process.

6. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he continues to comply with the conditions set out in paragraphs 5 (f) – (m).

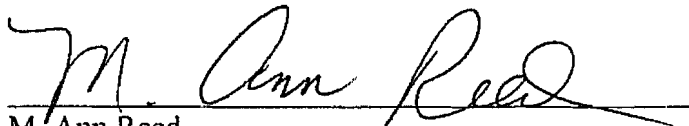
7. If an order staying any period of this suspension is entered and the Defendant fails to comply with any one or more of the conditions referenced in Paragraph 6, then the stay of the suspension of his law license may be lifted as provided in

§ .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

8. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraphs 5 (a) – (m) above before seeking reinstatement of his license to practice law.

9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members,  
this the 10<sup>th</sup> day of November, 2004.

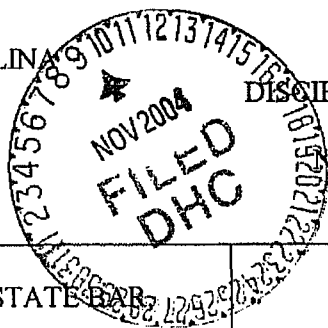
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M. Ann Reed  
Chair, Disciplinary Hearing Committee



STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
04 DHC 20

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

RICHARD V. BROADNAX, Attorney,

Defendant

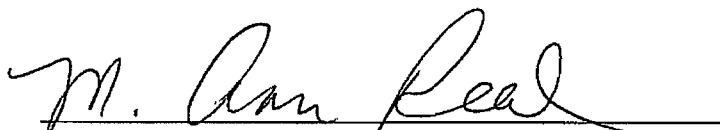
ORDER FOR CORRECTION OF  
CLERICAL ERROR IN ORDER OF  
DISCIPLINE

This matter being before the hearing committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair, T. Richard Kane, and Lorraine Stephens upon Plaintiff's Motion for Correction of Clerical Error in the Order of Discipline previously issued in this case in accordance with Rule 60(a) of the North Carolina Rules of Civil Procedure and 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(z)(3) of the North Carolina State Bar Discipline and Disability Rules. Finding that clerical errors exist in the Order of Discipline previously issued in this case and finding that such errors are appropriately corrected under Rule 60(a) of the North Carolina Rules of Civil Procedure,

IT IS HEREBY ORDERED that a Corrected Order of Discipline be entered in this case, correcting clerical errors as follows: the paragraphs under the Order of Discipline section are renumbered as #1 through #9 consecutively, the reference to paragraph 6 in the current paragraphs 7 and 9 are changed to paragraph 5, and any other references affected by the re-numbering are adjusted accordingly.

Finding that correction of these clerical errors makes no substantive change in the Order of Discipline, IT IS FURTHER ORDERED that all applicable post-hearing time periods will remain as they were prior to entry of this order, proceeding from service upon Defendant of the original Order of Discipline in this case.

10<sup>th</sup> Signed by the Chair with the consent of the other hearing committee members, this the  
day of November, 2004.

  
M. Ann Reed  
Chair, Disciplinary Hearing Committee