

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07DHC14

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT N. WECKWORTH, JR.,
Attorney,

Defendant

CONSENT ORDER

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, J. Michael Booe and Michael J. Houser. Robert A. Crabill represented the Plaintiff, the North Carolina State Bar. The Defendant, Robert N. Weckworth, Jr., represented himself. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Robert N. Weckworth, Jr. ("Weckworth"), was admitted to the North Carolina State Bar in 1989, 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, Weckworth was engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.

4. On or about August 25, 2003, Robin B. Johnson ("Johnson") hired Weckworth to represent her in an emergency custody action.

5. On or about August 27, 2003, Weckworth appeared on behalf of Johnson at an emergency custody hearing in Guilford County file number 03 CVD 9712 ("03 CVD 9712").

6. On or about September 16, 2003, a temporary order was filed concerning the emergency child custody hearing in 03 CVD 9712.

7. On or about February 11, 2004 Weckworth appeared on behalf of Johnson at a hearing which resulted in a Memorandum of Judgment addressing possession of the marital residence in 03 CVD 9712.

8. In the Memorandum of Judgment, Johnson was granted rights to the marital home located at 2106 Brickhaven Drive, Greensboro, NC ("marital home") and made solely responsible for the payment of any and all mortgage payments on the marital home. Johnson was also made responsible for all utility payments associated with the home. The parties to 03 CVD 9712 agreed to separate and the marital home was to immediately be placed on the market for sale.

9. Weckworth did not file an action to obtain alimony or child support or undertake any further action on Johnson's behalf.

10. Weckworth did not seek or obtain permission from the court to withdraw from representation of Johnson in 03CVD9712.

11. After the February 11, 2004, hearing Weckworth did not promptly provide a copy of Johnson's file to Johnson despite telephone calls requesting the file.

12. In or about October 2004, Johnson had not received her file despite requests to Weckworth and requested assistance from the North Carolina State Bar's Client Assistance Program.

13. On or about October 5, 2004, Sandra Saxton ("Saxton"), a Client Assistance Program employee, contacted Weckworth via email and voicemail and asked Weckworth to send Johnson her client file.

14. On or about October 12, 2004, Saxton again called and sent an email to Weckworth asking him to contact her and/or send Johnson a copy of her file.

15. On or about October 13, 2004, Saxton left another voicemail message for Weckworth at his office.

16. On or about October 15, 2004, Saxton left another voicemail message for Weckworth at his office.

17. On or about October 18, 2004, Saxton sent a letter to Weckworth which referenced the previous failed contact attempts and again asked Weckworth to send Johnson a copy of her file.

18. Only after October 20, 2004, did Weckworth finally respond to Saxton via email and stated he would send out Johnson's file to Johnson that day.

19. On or about October 26, 2004, Johnson contacted the State Bar and indicated that she still had not received her file from Weckworth.

20. On October 26, 2004, Saxton emailed Weckworth and asked him to confirm the date the file was sent to Johnson.

21. On or about November 2, 2004, Saxton sent Weckworth another letter asking him to provide the file to Johnson.

22. On or about November 4, 2004, Johnson sent the State Bar a letter stating that she still had not received her file from Weckworth.

23. Weckworth did not respond to any of Saxton's follow up letters or emails and did not send Johnson a copy of her file until November 18, 2004.

~~24. In or about July, 2005, April Gilliam was a party in a domestic case pending in Guilford County, file number 05 CVD 4184 ("05 CVD 4184").~~

25. On or about August 5, 2005, April Gilliam ("Gilliam") hired Weckworth to represent her in 05 CVD 4184 for the purpose of setting aside, and in the alternative, seeking modification of a child custody order.

26. Gilliam paid Weckworth \$500.00 of a \$1,500.00 retainer fee.

27. On or about September 15, 2005, Weckworth filed a Rule 60 Motion for Relief and Motion to Modify Custody in 05 CVD 4184.

28. On September 16, 2005, Weckworth appeared at a hearing to argue the Rule 60 Motion for Relief and Motion to Modify Custody in 05 CVD 4184 as well as represent Gilliam ~~on a motion for contempt that had been served on Gilliam on August 25, 2005.~~

29. On or about the morning of September 16, 2005, Weckworth called Gilliam between 8:30 and 9:00 am and told her not to appear at court. Weckworth told Gilliam to remain on telephone standby and that he would call her to appear if the matter came before the judge.

30. Weckworth did not call Gilliam back until approximately 4:30 p.m. on September 16, 2005. Weckworth told Gilliam that the Rule 60 Motion and the motion for contempt were not heard and that these matters were continued.

31. Weckworth did not discuss the status of the case with Gilliam until on or about November 21, 2005.

32. On or about November 21, 2005, Gilliam ran into Weckworth at the Guilford County Courthouse.

33. Weckworth acknowledged to Gilliam that he had not pursued the Rule 60 Motion he had filed on her behalf.

34. Weckworth represented to Gilliam that he would pursue the Rule 60 Motion when Gilliam paid the balance of the retainer fee.

35. Weckworth did not pursue further hearing on the Rule 60 Motion.

36. Gilliam did not pay Weckworth any additional fee.

37. Weckworth did not seek or obtain the court's permission to withdraw as attorney of record for Gilliam in 05CVD4184.

38. On or about January 9, 2006, Gilliam filed a Petition for Resolution of Disputed Fee with the Client Assistance Program ("CAP") of the North Carolina State Bar. A fee dispute file captioned 06FD0019 ("06FD0019") was opened.

39. On or about January 9, 2006, CAP sent Weckworth a Notification of Mandatory Fee Dispute Resolution in 06FD0019 via certified mail.

40. Weckworth personally signed for the Notification of Mandatory Fee Dispute in 06FD0019 on January 23, 2006.

41. As set forth in the Notification of Mandatory Fee Dispute Resolution, Weckworth's response to the Notification of Mandatory Fee Dispute Resolution in 06FD0019 was due on February 7, 2006.

42. Weckworth did not respond to the Notification of Mandatory Fee Dispute Resolution in 06FD0019 by February 7, 2006.

43. On or about February 14, 2006, Luella Crane ("Crane"), director of the Fee Dispute Program and of CAP, called Weckworth and left a voicemail message at his office asking him to call her back with a status of his response to the Fee Dispute in 06FD0019.

44. Weckworth did not respond to Crane's February 14, 2006 phone call.

45. On or about February 28, 2006, Crane called Weckworth's office and left another voicemail message stating that, if he did not respond to the Fee Dispute in 06FD0019, a Grievance file would be opened at the State Bar.

46. Weckworth did not call Crane back or respond to the Fee Dispute in 06FD0019.

47. On or about March 7, 2006 the Fee Dispute file 06FD0019 was closed due to Weckworth's failure to respond and Grievance file 06 G 257 was opened by the State Bar's Grievance Committee.

48. On or about March 29, 2006, Crane called Weckworth regarding another overdue response to a Fee Dispute in another matter regarding Crystal Baker.

49. On or about March 30, 2006, Weckworth responded to 06FD0019, the Gilliam Fee Dispute.

50. On or about March 4, 2005, Crystal M. Baker ("Baker") retained Weckworth to represent her in a divorce and custody matter.

51. Baker delivered \$1,100.00 to Weckworth, \$1000.00 of which Baker and Weckworth agreed would compensate Weckworth for his legal services and \$100.00 of which would be applied to pay court costs.

~~52. Weckworth told Baker he would file Baker's pleadings.~~

53. Weckworth did not file divorce and custody documents for Baker until June 2006.

54. In or about August 2005, Weckworth represented Baker at a 50B domestic violence hearing.

55. Weckworth represented to Baker that her pleadings would be filed on or about August 23, 2005.

56. Weckworth did not file the divorce and custody pleadings by August 23, 2005.

57. Baker made numerous attempts to contact Weckworth by telephone over the next several months to find out the status of her case. Weckworth did not respond to Baker's telephone calls.

58. On or about November 4, 2005, Baker sent a certified letter to Weckworth's office expressing her concerns about his lack of diligence and lack of communications and terminating the attorney-client relationship.

59. Baker's letter was returned unclaimed.

60. On or about February 27, 2006, Baker filed a Petition for Resolution of Disputed Fee with the Client Assistance Program of the North Carolina State Bar. A fee dispute file captioned 06FD0124 was opened.

61. On or about February 27, 2006, CAP sent Weckworth a Notification of Mandatory Fee Dispute Resolution in 06FD0124 via certified mail.

62. The Notification of Mandatory Fee Dispute Resolution in 06FD0124 was served upon Weckworth on March 1, 2006. The certified letter containing the notice was signed for by Charles Griffin, Weckworth's father-in-law.

63. The State Bar received no response to the Notification of Mandatory Fee Dispute Resolution in 06FD0124.

64. On or about March 29, 2006, Luella Crane called Weckworth and left a voicemail message stating that a Grievance file would be opened if he did not contact her concerning his lack of response to the Fee Dispute 06FD0124.

65. Weckworth did not respond to Crane's voice mail message.

66. On March 30, 2006, Weckworth responded to a Fee Dispute in Gilliam's case 06FD0019, but did not respond to the Fee Dispute in Baker's case 06FD0124.

67. On or about April 3, 2006, the Fee Dispute file 06FD0124 was closed due to Weckworth's failure to respond and Grievance file 06 G 0381 was opened by the State Bar's Grievance Committee.

68. On June 6, 2006, Weckworth was served with a letter of notice in the Baker grievance file 06G0381.

69. Weckworth contacted Baker and explained his failure to file her divorce and custody complaint.

70. Baker remained Weckworth's client and on or about June 16, 2006, Weckworth filed a complaint on behalf of Baker.

Based on the foregoing findings of fact, the Hearing Committee makes the following

CONCLUSIONS OF LAW

(a) By not responding to requests for Johnson's client file from Johnson and the State Bar Client Assistance Program, Weckworth failed to keep his client reasonably informed and failed to comply with reasonable requests for information in violation of Rule 1.4 of the Revised Rules of Professional Conduct;

(b) By failing to return Johnson's file upon request, Weckworth failed to take steps to protect his client's interests in violation of Rule 1.16(d) and failed to act with reasonable diligence and promptness in violation of Rule 1.3 of the Revised Rules of Professional Conduct;

(c) By failing to respond to the Notification of Mandatory Fee Dispute Resolution in 06FD0019 before that case was closed, Weckworth failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5 (f) of the Revised Rules of Professional Conduct;

(d) By effectively withdrawing from representation of Gilliam by not pursuing the Rule 60 Motion and by neither seeking nor obtaining leave of court to withdraw from representation of Gilliam, Weckworth failed to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation in violation of Rule 1.16(c) and failed to act with reasonable diligence and promptness in violation of Rule 1.3 of the Revised Rules of Professional Conduct;

(e) By failing to file the divorce and custody pleadings on behalf of Baker until June 16, 2006 after being hired on March 4, 2005, Weckworth failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3; and failed to keep Baker reasonably informed about the status of her matter in violation of Rule 1.4 of the Revised Rules of Professional Conduct; and

(f) By failing to respond to the Notification of Mandatory Fee Dispute Resolution in 06FD0124 and failing to respond to Crane's voicemails and letters, Weckworth failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f) of the Revised Rules of Professional Conduct.

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

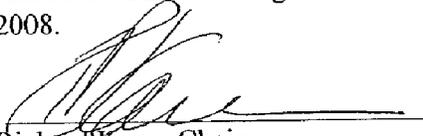
1. Defendant's misconduct is aggravated by the following factors:
 - a) Multiple offenses in this matter;
 - b) A pattern of misconduct;
 - c) Substantial experience in the practice of law;
 - d) Issuance of a letter of warning to the defendant within the three years immediately preceding the filing of the complaint.
2. Defendant's misconduct is mitigated by the following factor:
 - a) Absence of a dishonest or selfish motive;

3. The aggravating factors outweigh the mitigating factor.
4. Defendant has violated one or more provisions of the Rules of Professional Conduct, and has caused harm or potential harm to his clients, the administration of justice, and the profession.
5. This DHC Committee has considered lesser alternatives and finds that a reprimand is the appropriate discipline.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

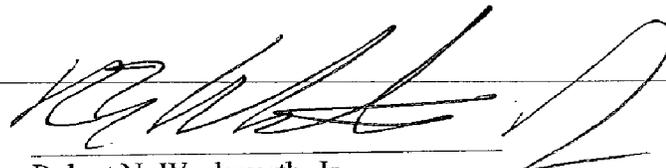
ORDER OF DISCIPLINE

1. The Defendant, Robert N. Weckworth, Jr., is hereby REPRIMANDED.
2. Weckworth is taxed with the costs of this action as assessed by the Secretary.
3. Signed by the Chair with the consent of the other hearing committee members, this the 14th day of FEBRUARY, 2008.

- 1) 
T. Richard Kane, Chair
- 2) Disciplinary Hearing Committee

CONSENTED TO BY:


Robert A. Crabill
Attorney for Plaintiff


Robert N. Weckworth, Jr.
Defendant