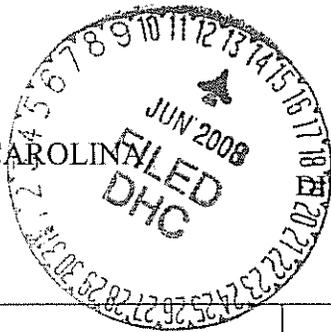


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 12

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT M. TALFORD, Attorney,

Defendant

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

This matter was heard on May 30, 2008 before a hearing committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair, and members John Breckenridge Regan and Michael J. Houser. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Defendant, Robert M. Talford, appeared and represented himself *pro se*. Based upon the pleadings, the stipulations of the parties, and the evidence introduced at the hearing, 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 M. Talford ("Defendant"), was admitted to the North Carolina State Bar in 1976, 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 the times relevant hereto, Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. Defendant was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

5. John B. Allen, Jr. ("Allen") retained Defendant on or about September 22, 2003 to represent him in a workers' compensation claim. Allen and Defendant entered

into a written fee agreement in which Allen agreed to pay Talford a contingent fee of one-third of Allen's total recovery in the case, subject to approval by the North Carolina Industrial Commission.

6. Allen had begun receiving weekly temporary disability payments from his employer shortly after he was injured on the job on September 20, 2003. After Allen was released back to work in April 2004, Defendant drafted a letter to the employer's adjuster presenting his case for Allen and seeking a settlement offer.

7. During the representation, Defendant communicated with the employer's attorney on Allen's behalf regarding Allen's claim.

8. Allen discharged Defendant in a letter dated December 1, 2004 and asked that Defendant release Allen's file to him by December 6, 2004.

9. Defendant did not provide Allen's file to Allen by December 6, 2004 or at any time thereafter.

10. In response to Allen's December 1, 2004 letter, Defendant wrote a letter dated December 10, 2004 to the Industrial Commission asking for permission to withdraw as attorney of record for Allen.

11. Defendant did not file a notice of appearance on Allen's behalf with the Industrial Commission and did not notify the Industrial Commission of his representation of Allen at the outset of the representation or before his discharge by Allen. The first notice Defendant gave to the Industrial Commission of his representation of Allen was after his discharge when he sent the Industrial Commission his letter dated December 10, 2004 asking for permission to withdraw.

12. In the December 10, 2004 letter Defendant asked that the Commission enter an order awarding attorney's fees to Defendant of one-third of Allen's temporary disability payments since April 21, 2004 and one-third of Allen's permanent impairment rating.

13. At the time of Defendant's December 10, 2004 letter to the Industrial Commission, Allen's case had not been resolved by consent or determined by hearing before the Industrial Commission.

14. At the time of Defendant's December 10, 2004 letter asking for payment of one-third of Allen's permanent impairment rating, Allen's final entitlement to benefits had not been determined, nor had the Industrial Commission found Allen had a permanent impairment entitling Allen to compensation.

15. Under Defendant's contingent fee contract with Allen, if the Industrial Commission had awarded Allen benefits for a permanent impairment during Defendant's representation of Allen, then Defendant would have been entitled to a fee of one-third of those benefits if approved by the Industrial Commission. Allen discharged Defendant,

however, before the event on which that fee was contingent – namely, obtaining benefits for a permanent impairment – occurred.

16. Because Defendant was discharged by Allen before the contingency occurred, any entitlement Defendant would have had to a fee for any benefits later awarded for a permanent impairment would have been under a *quantum meruit* theory.

17. The amount of fee in *quantum meruit* is the reasonable value of the services rendered. At the time of Defendant's discharge, Allen's status, ability to work, and medical condition were contested. Additionally, at the time of Defendant's discharge significant work remained to be done in the case, including mediation and the hearing. Given the status of the case at the time of Defendant's discharge, the reasonable value of Defendant's services would not have entitled him to the full contractual one-third fee of any eventual award to Allen of benefits for a permanent impairment under *quantum meruit*.

18. During the representation, Defendant solicited and Allen loaned Defendant certain sums so Defendant could pay personal expenses. Defendant did not provide Allen with any documentation of the loan, of the terms of the loan, or of the terms of repayment of the loan. Defendant did not advise Allen orally or in writing to consult an independent attorney regarding making these loans to Defendant. Allen did not give informed consent in writing to the terms of the loans and Defendant's role in the transactions.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

- (a) By soliciting and receiving loans from Allen for his personal use that were not documented in writing, for which the terms of repayment were not described in writing, for which Allen did not provide informed consent in writing, and for which Defendant did not provide written notice to Allen that Allen should consult with another attorney about the transactions, Defendant entered into a business transaction with his client without fully disclosing to his client the terms of the transaction in writing, without advising his client in writing of the desirability of seeking independent legal

counsel, and without obtaining his client's informed consent in writing in violation of Rule 1.8(a);

- (b) By seeking from the Industrial Commission a fee of one-third of Allen's temporary disability payments since April 21, 2004 and one-third of Allen's permanent impairment rating when Defendant was not entitled to receive one-third of Allen's total recovery and which would have constituted a clearly excessive or illegal fee if collected, Defendant charged an illegal or clearly excessive fee in violation of Rule 1.5(a); and
- (c) By failing to provide Allen's file after Allen terminated Defendant's services, Defendant failed to surrender papers and property to which the client is entitled upon termination in violation of Rule 1.16(d) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4).

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 committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:
 - a. Prior disciplinary offenses, to wit: an admonition issued on March 27, 1996 and a reprimand issued on October 20, 2003;
 - b. Dishonest or selfish motive;
 - c. Multiple offenses;
 - d. Refusal to acknowledge the wrongful nature of his conduct;
 - e. Substantial experience in the practice of law; and
 - f. Indifference to making restitution.
2. Defendant's misconduct is mitigated by the following factor:
 - a. Remoteness of the 1996 admonition.
3. The aggravating factors outweigh the mitigating factor.

4. Defendant's conduct resulted in potential significant harm to his client. Defendant did not provide any services to or representation on behalf of Allen in the workers' compensation case after December 31, 2004. Defendant did not ensure that the order he thought was required for his withdrawal was issued so that Allen could have another attorney represent him. Defendant further attempted to block a successor attorney from representing Allen by failing to turn over Allen's file to Allen or Allen's new attorney. Defendant's misconduct could have left Allen without representation in a disputed workers' compensation case in which mediation and a hearing had yet to occur.

5. Defendant's effort to collect a full one-third fee of Allen's total recovery had the potential, if successful, of hindering payment to, and thus retention of, a successor attorney. This conduct caused further potential significant harm to Allen.

6. The failure of Defendant to put the loan terms in writing, to advise Allen in writing to consult with another attorney, and to obtain Allen's informed consent in writing to loans which Defendant has failed to re-pay has also caused potential significant harm to Allen.

7. The hearing committee has considered lesser sanctions and finds that discipline short of suspension would not sufficiently protect the public for the following reasons:

- a. Defendant has engaged in multiple violations of the Revised Rules of Professional Conduct concerning this client and his misconduct was not the result of a mistake, nor did it appear to be an aberration; and
- b. Defendant elevated his own financial interests over the best interests of his client and his conduct caused potential significant harm to his client.

8. After consideration of all of the above factors, the hearing committee finds that a censure is insufficient to protect the public.

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

ORDER OF DISCIPLINE

1. Defendant, Robert M. Talford, is hereby suspended from the practice of law in North Carolina for one year, beginning 30 days from the date of service of this order upon Defendant. The effective date of this order is 30 days from the date of service of this order upon 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. The costs of this action, including administrative costs and all costs allowed by statute, are taxed to Defendant. Defendant shall pay the costs of this proceeding as assessed by the Secretary within 30 days of service of the statement of costs upon him.

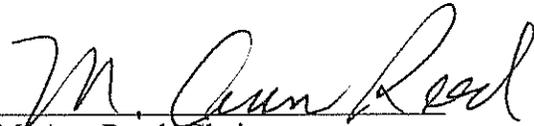
5. After serving 60 days of the active suspension of his license, the remaining period of Defendant's suspension shall be stayed, subject to the terms of this order. Defendant's law license shall be restored to active status on the 61st day following the effective date of this order, with Defendant's active status contingent upon continued compliance with the terms of this Order concerning the stay of the remainder of his suspension. The remainder of Defendant's suspension will be stayed so long as Defendant complies with the following conditions:

- a. The Defendant will respond to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated in the communication;
- b. The Defendant will advise the Bar in writing of all address changes within 10 days of the change;
- c. The Defendant will timely comply with his State Bar continuing legal education requirements and will pay all fees and costs assessed for continuing legal education and all fees and costs assessed by the membership department of the State Bar by the applicable deadlines;
- d. The Defendant will not violate the laws of any state or of the United States; and
- e. The Defendant will not violate any provision of the Revised Rules of Professional Conduct.

6. If Defendant fails to comply with any of the conditions for the stay of his suspension in this Order, 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.

7. 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 13th day of June, 2008.



M. Ann Reed, Chair
Disciplinary Hearing Committee