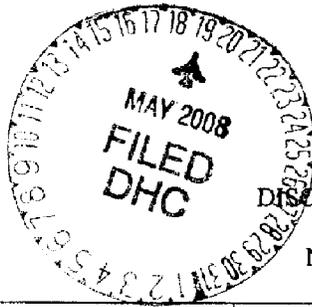


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 23

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

AMANDA S. SMITH, Attorney,

Defendant

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

This matter was heard on 2 May 2008 before a hearing committee of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, and members M. Ann Reed and H. Dale Almond. Carmen K. Hoyme represented Plaintiff, the North Carolina State Bar. Defendant, Amanda S. Smith, was not represented and was not present at the hearing. Based upon the pleadings and admissions pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f), 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, Amanda S. Smith ("Smith" or "Defendant"), was admitted to the North Carolina State Bar on 23 August 1991 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. Defendant was properly served with process and the hearing was held with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Smith was engaged in the practice of law in the State of North Carolina and maintained a law office in the town of Winterville, Pitt County, North Carolina.

5. In December 2004, Gregory Thomas ("Thomas") and his wife retained Smith to file an adoption petition.

6. Thomas paid Smith a \$1,200.00 flat fee in advance for her services.

7. For several months after Thomas retained Smith, he received no communication from Smith.

8. In April 2005, Thomas contacted the clerk of court to inquire about the status of his case and was told that no petition for adoption had been filed.

9. Thomas then attempted to contact Smith by phone, but received no response from her for approximately one and a half months.

10. When Thomas eventually contacted Smith about the matter, she stated there had been a "mix-up" in filing the adoption petition.

11. Smith never filed an adoption petition on Thomas's behalf.

12. During a telephone conversation in June 2005, Thomas discharged Smith as his attorney.

13. During their June 2005 telephone conversation, Smith said she would return Thomas's client file and refund the fee he had paid.

14. Smith did not return Thomas's file or refund his fee.

15. After their June 2005 telephone conversation, Thomas received no further communication from Smith.

16. On or about 19 March 2004, Jane Ellis ("Ellis") hired Smith to file an action for divorce on Ellis's behalf.

17. Ellis's sister, Sue Dittman ("Dittman"), paid Smith \$1,600.00 as an advance on Smith's hourly fees for the legal services Smith was to provide to Ellis.

18. In the ensuing year, many telephone calls from Ellis and Dittman to Smith inquiring about the status of Ellis's case were not returned.

19. The email address Smith provided to Ellis and Dittman was not valid.

20. In April 2005, Ellis contacted Smith by telephone and told Smith that her husband had forged her signature on a tax return, and as a result, Ellis was unable to obtain her refund from the Internal Revenue Service (IRS).

21. Smith told Ellis she would send her the necessary paperwork to sign and submit to the IRS regarding this issue.

22. Ellis never received any documents from Smith to be submitted to the IRS.
23. On or about 2 August 2005, Dittman sent Smith a letter by certified mail, which requested a refund of the \$1,600.00 paid by Dittman on Ellis's behalf and indicated that they would be hiring another attorney to represent Ellis.
24. Smith received Dittman's 2 August 2005 letter on 4 August 2005, but did not respond to the letter.
25. Smith did not refund any of the fees paid by Dittman on Ellis's behalf.
26. Smith never provided Ellis or Dittman with an accounting of the \$1,600.00 advance on Smith's hourly fees paid by Dittman on behalf of Ellis.
27. In March 2005, Scott Grady ("Grady") hired Smith to represent him in a child custody action.
28. Grady paid Smith \$2,500.00 as an advance on Smith's hourly fees for her services.
29. Smith prepared and filed an answer and counterclaim on Grady's behalf.
30. Smith failed to appear at the 29 March 2005 hearing in Grady's case.
31. Smith arrived at the courthouse only after Grady called Smith and asked why she was not at the hearing.
32. When Smith arrived at the courthouse, she asked that Grady's case be continued.
33. Smith did not respond to Grady's subsequent telephone calls and emails inquiring about his case.
34. In July 2005, the phone number at which Grady was attempting to contact Smith was disconnected.
35. On or about 20 July 2005, Grady sent Smith a letter by certified mail to her South Evans Street Address, in which he discharged Smith as his attorney, and requested an accounting of work performed on the case and a partial refund of fees paid.
36. Grady's 20 July 2005 letter to Smith was returned with a notation indicating it was undeliverable and no forwarding information was available.
37. Smith did not refund any of the fees paid by Grady.
38. Smith never provided Grady with an accounting of the \$2,500.00 advance on Smith's hourly fees paid by Grady.

39. In November 2005, Charlotte W. Woolard ("Woolard") hired Smith to represent her in seeking to intervene in a juvenile case involving Woolard's granddaughter, who was in the custody of social services. Woolard wanted to seek custody of her granddaughter by intervening in the case.

40. Woolard also hired Smith to assist her in the process of adopting two other grandchildren who are in Woolard's legal custody.

41. Woolard provided Smith with original documents related to the potential adoption, including signed and notarized documents showing Woolard's daughter's consent to the adoption of her children by Woolard.

42. Woolard paid Smith \$2,500.00 as an advance on Smith's hourly fees for her services.

43. Smith did not deposit the \$2,500.00 paid by Woolard into her trust account.

44. Smith drafted a motion to intervene in the juvenile case, which was reviewed and approved by Woolard.

45. Smith later told Woolard she had filed the motion to intervene.

46. Smith did not file the motion to intervene on behalf of Woolard.

47. The juvenile case involving Woolard's granddaughter was scheduled for hearing on 15 December 2005 in Chapel Hill, North Carolina.

48. On 13 December 2005, Smith's husband called Woolard and advised her that Smith was sick and would therefore be unable to attend the 15 December 2005 hearing.

49. The juvenile case involving Woolard's granddaughter was continued to 5 January 2006.

50. Woolard and her husband ("the Woolards") attended the 5 January 2006 hearing of the juvenile case involving Woolard's granddaughter, but Smith was not present.

51. The Woolards told the juvenile court that they wished to intervene in the case so that they could seek custody of their granddaughter. The court indicated it would continue the case until 6 July 2006, or until such earlier date as was arranged by Woolard's attorney.

52. Woolard didn't receive any communication from Smith from 13 December 2005 through 7 February 2006.

53. On or about 7 February 2006, Woolard contacted Smith by telephone.

54. In their 7 February 2006 conversation, Smith told Woolard that the juvenile case involving Woolard's granddaughter was scheduled to be heard on 6 April 2006.

55. On the morning of 6 April 2006, Smith called Woolard and stated that she was sick and unable to appear in court that day, but the case had been continued until 20 April 2006.

56. Woolard later contacted the clerk of court and was told that the juvenile case involving her granddaughter had not been on the docket for 6 April 2006.

57. Both the Woolards and Smith were present for the juvenile court session in Chapel Hill on 20 April 2006, but the juvenile case involving Woolard's granddaughter was not called.

58. Woolard's granddaughter's case was not on the 20 April 2006 juvenile court docket.

59. Beginning on or about 21 April 2006, Woolard left repeated phone messages for Smith inquiring about the status of the case.

60. Smith did not return Woolard's telephone calls.

61. In late May 2006, Woolard managed to contact Smith by phone, at which time Woolard asked Smith to return her file, including the original signed documents required for the adoption of Woolard's two grandchildren.

62. Smith said she was traveling, but that she would mail Woolard's file to her when she returned.

63. Smith never provided Woolard with her client file.

64. Woolard received no further communication from Smith.

65. In or about May 2005, Angela Shockey (who has since returned to use of her maiden name, Forbes, and will be referred to hereinafter as "Forbes") retained Smith to prepare a separation agreement and file for divorce.

66. Forbes paid Smith \$1,200.00 in advance for her services.

67. In or about June 2005, Forbes reviewed a draft separation agreement at Smith's office and approved sending the separation agreement to her husband for his signature and subsequent filing with the court.

68. From June through November 2005, Forbes inquired several times about the status of the separation agreement.

69. In response to these inquiries, Smith told Forbes that the separation agreement had been sent to Forbes's husband by certified mail.

70. In December 2005, Smith told Forbes the separation agreement had not been sent to Forbes's husband.

71. Forbes's mother then picked up the separation agreement and personally delivered it to Forbes's husband for his signature.

72. Smith did not file a divorce complaint on Forbes's behalf.

73. On or about 13 February 2006, Forbes contacted Smith by phone to ask why the divorce complaint had not been filed.

74. Smith told Forbes that she would draft the divorce complaint and send a copy to Forbes by certified mail the next week.

75. Forbes never received the divorce complaint from Smith.

76. From February through June 2006, Forbes made repeated telephone calls and left messages for Smith inquiring about the status of her case.

77. In June 2006, Forbes sent a letter to Smith in which she terminated the representation and requested a refund of fees paid.

78. Smith did not respond to Forbes's phone messages or to Forbes's June 2006 letter, and did not refund any of the fees paid by Forbes.

79. On 15 September 2005, Dittman filed a Petition for Resolution of Disputed Fee ("Dittman/Ellis fee dispute") with the North Carolina State Bar. The Dittman/Ellis fee dispute was assigned file number 05FD0530.

80. Notice of the Dittman/Ellis fee dispute was sent to Smith's South Evans Street address by certified mail on or about 15 September 2005, and was returned marked "unclaimed."

81. Notice of the Dittman/Ellis fee dispute was re-sent to Smith's Wimbeldon Drive address on or about 6 October 2005, and was also returned marked "unclaimed."

82. On 22 September 2005, Grady filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Grady's fee dispute was assigned file number 05FD0543.

83. Notice of Grady's fee dispute was sent to Smith's South Evans Street address by certified mail on or about 22 September 2005, and was returned marked "unclaimed."

84. On 5 October 2005, Thomas filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Thomas's fee dispute was assigned file number 05FD0574.

85. Notice of Thomas's fee dispute was sent to Smith's South Evans Street address by certified mail on or about 5 October 2005, and was returned marked "unclaimed."

86. On 19 October 2005, the fee dispute mediator assigned to the Dittman/Ellis, Grady, and Thomas fee disputes contacted the State Bar councilor for Smith's district and requested his assistance in contacting Smith.

87. The district councilor contacted Smith by telephone, provided Smith with the fee dispute mediator's contact information, and advised Smith to address all fee disputes pending against her with the State Bar.

88. Smith failed to contact the fee dispute mediator or otherwise respond to the Dittman/Ellis, Grady, and Thomas fee disputes.

89. On 31 July 2006, Forbes filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Forbes's fee dispute was assigned file number 06FD0445.

90. Notice of Forbes's fee dispute was sent to Smith's Winterville post office box by certified mail on or about 31 July 2006, and was returned marked "unclaimed."

91. Notice of Forbes's fee dispute was re-sent to Smith's Barrell Drive address by certified mail on or about 11 September 2006, and was also returned marked "unclaimed."

92. Smith was served by sheriff with the notice of Forbes's fee dispute on 9 October 2006 at her Barrell Drive address.

93. Smith was required to respond within fifteen days of receipt of the notice of fee dispute, as specified in the notice. Smith failed to respond to the notice of Forbes's fee dispute.

94. On or about 28 October 2005, the State Bar opened a grievance file concerning Smith's conduct in the matters of Ellis, Grady, and Thomas, and Smith's failure to participate in the fee dispute resolution process related to these clients. This grievance was assigned file number 05G1176.

95. The State Bar issued a letter of notice to Smith in the grievance regarding the Ellis, Grady, and Thomas matters on or about 10 November 2005. The letter of notice was sent by certified mail to Smith's South Evans Street address and to Smith's Winterville post office box. Both letters of notice were returned marked "unclaimed."

96. The letter of notice in the grievance regarding the Ellis, Grady, and Thomas matters was re-sent to Smith's Winterville post office box on or about 19 June 2006.

97. Smith received the letter of notice regarding the Ellis, Grady and Thomas matters by certified mail on 22 June 2006.

98. Smith was required to respond within fifteen days of receipt of the letter of notice. She failed to respond to the grievance regarding the Ellis, Grady, and Thomas matters within that time period.

99. On 2 June 2006, Woolard filed a grievance with the State Bar regarding Smith's failure to provide the services for which she was retained and failure to return her client file. Woolard's grievance was assigned file number 06G0608.

100. The State Bar issued a letter of notice to Smith regarding Woolard's grievance on or about 8 June 2006. The letter of notice was sent by certified mail to Smith's Winterville post office box and was returned marked "unclaimed."

101. On or about 11 July 2006, the letter of notice regarding Woolard's grievance was re-sent to Smith's Winterville post office box and was returned marked "unclaimed."

102. On or about 14 September 2006, the letter of notice regarding Woolard's grievance was re-sent to Smith's Barrell Drive address.

103. Smith received the letter of notice regarding Woolard's grievance by certified mail on 16 September 2006.

104. Smith was required to respond within fifteen days of receipt of the letter of notice. She failed to respond to the letter of notice regarding Woolard's grievance within that time period.

105. On or about 2 November 2006, the State Bar opened a grievance file concerning Smith's conduct in Forbes's case and Smith's failure to participate in the fee dispute resolution process initiated by Forbes. This grievance was assigned file number 06G1153.

106. The State Bar issued a letter of notice to Smith in the grievance regarding the Forbes matter on or about 13 November 2006. The letter of notice was sent by certified mail to Smith's Barrell Drive address.

107. Smith received the letter of notice in the grievance regarding the Forbes matter by certified mail on 16 November 2006.

108. Smith was required to respond within fifteen days of receipt of the letter of notice. She failed to respond to the grievance regarding the Forbes matter within that time period.

109. On 15 November 2006, Smith requested additional time to respond to Woolard's grievance and to the grievance regarding the Ellis, Grady, and Thomas matters. The State Bar gave Smith an extension until 29 November 2006 to respond.

110. Smith failed to respond to Woolard's grievance or the grievance regarding the Ellis, Grady, and Thomas matters by 29 November 2006.

111. By letter dated 3 January 2007, the State Bar noted Smith's failure to respond to Woolard's grievance, the grievance regarding the Forbes matter, and the grievance regarding the Ellis, Grady, and Thomas matters. In the 3 January 2007 letter, the State Bar notified Smith that 7 February 2007 was the final deadline for her to respond to all pending grievances.

112. Smith failed to respond to Woolard's grievance, the grievance regarding the Forbes matter, or the grievance regarding the Ellis, Grady, and Thomas matters by 7 February 2007 or thereafter.

As previously found in the Default Judgment and now recited herein, based on the foregoing Findings of Fact the Committee enters the following

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Committee and the Committee has jurisdiction over Defendant, Amanda S. Smith, and the subject matter.

2. 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) and (3) as follows:

- (a) By failing to perform the legal services Thomas, Ellis, Grady, Woolard and Forbes hired her to perform, Smith failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (b) By failing to return calls from Thomas, Ellis, Grady, Woolard and Forbes inquiring about their cases, Smith failed to keep her clients reasonably informed about the status of their legal matters and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a);
- (c) By collecting fees from Thomas and Dittman (on behalf of Ellis), and then failing to provide the legal services for which the fee was paid, Smith collected clearly excessive fees in violation of Rule 1.5(a);
- (d) By failing to communicate with the fee dispute mediator or otherwise respond to the Dittman/Ellis, Grady, and Thomas fee disputes and by failing to respond to written notice of Forbes's fee dispute, Smith failed to

participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f);

- (e) By failing to deposit the \$2,500.00 paid by Woolard as an advance on Smith's hourly fees into her trust account, Smith failed to maintain entrusted property separate from her own property in violation of Rule 1.15-2(a), and failed to promptly deposit trust funds received into a trust account in violation of Rule 1.15-2(b);
- (f) By failing to provide either Ellis or Dittman with an accounting of the \$1,600.00 paid by Dittman on behalf of Ellis, and by failing to provide an accounting of the fees paid by Grady, Smith failed to render to a client a written accounting of all trust funds at least annually in violation of Rule 1.15-3(d);
- (g) By failing to refund any unearned portion of the fees paid by Thomas, Dittman (on behalf of Ellis), Woolard, and Forbes, and by failing to return the client file to Thomas and Woolard, Smith failed to protect a client's interests upon termination of the representation in violation of Rule 1.16(d);
- (h) By failing to respond to letters of notice in Woolard's grievance, the grievance regarding the Forbes matter, and the grievances regarding the Ellis, Grady, and Thomas matters, Smith failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3); and
- (i) By telling Woolard that she had filed the motion to intervene on her behalf when she had not done so, and by telling Woolard that her granddaughter's case was scheduled for hearing when it was not on the docket, Smith engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

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 OF FACT REGARDING DISCIPLINE

1. Smith's misconduct is aggravated by the following factors:
 - a. Prior disciplinary record;
 - b. Pattern of misconduct;

- c. Multiple offenses;
 - d. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
 - e. Refusal to acknowledge the wrongful nature of the conduct;
 - f. Substantial experience in the practice of law; and
 - g. Indifference to making restitution.
2. Smith's misconduct is mitigated by the following factors:
 - a. Personal or emotional problems; and
 - b. Mental disability or impairment.
 3. Defendant has engaged in conduct that has caused significant harm to her clients, in that:
 - a. Smith accepted fees from Thomas, Dittman (on behalf of Ellis), Grady, Woolard, and Forbes and did not provide the legal services for which the fee was paid, thereby causing her clients financial loss.
 - b. Smith's failure to perform the services for which she was hired delayed resolution of the legal matters of Thomas, Ellis, Grady, Woolard and Forbes.
 - c. The delay caused by Smith's neglect of her clients' child custody and adoption matters also caused those clients emotional distress.
 - d. Charlotte Woolard lost the opportunity to intervene in her granddaughter's case and no longer has any contact with her granddaughter, due at least in part to Smith's failure to file the petition on Woolard's behalf.
 4. Defendant's failure to participate in the fee dispute resolution process and failure to respond to letters of notice from the State Bar regarding grievances caused significant harm to the profession and results in significant potential harm to the public. The legal profession is entrusted with the privilege of self-regulation. The State Bar can only regulate the profession if its members respond to inquiries of the State Bar and otherwise participate in this self-regulation. Defendant's failure to participate in the self-regulation of the profession shows an unacceptable disregard for the regulatory authority of the State Bar. Defendant's failure to participate in the profession's self-regulation impedes effective self-regulation and jeopardizes the privilege of the profession to remain self-regulating.

5. During the pendency of the instant disciplinary case, Smith continued her pattern of refusing to participate in the process of self-regulation by failing to participate in the fee dispute resolution process for two additional fee disputes initiated by Smith's former clients, Kathy Hardison and Thomas and Linda Thigpen.

6. Defendant's conduct caused significant harm and potential harm to clients, to the profession, and to members of the public.

7. This DHC Hearing 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 to Defendant's clients, and to the profession caused by Defendant's conduct, and the significant potential harm Defendant poses to the public.

8. An Order imposing discipline short of a suspension of Defendant's law license would fail to acknowledge the seriousness of the offenses, would be inconsistent with other 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.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Amanda S. Smith, is hereby suspended for five years.

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

3. Smith shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules, including but not limited to distributing any client property, including funds held for clients in her trust account, to her former clients or initiating appropriate escheat procedures. Defendant shall file an affidavit certifying she has complied with the wind down rule with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order.

4. At the conclusion of the five year active suspension of her license, Defendant may apply to be reinstated to the practice of law by filing a petition with the Secretary of the North Carolina State Bar demonstrating compliance with the general provisions for reinstatement set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B § .0125(b) and demonstrating by clear, cogent, and convincing evidence that she:

- a. Properly wound down her 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. Paid the costs of this proceeding within 30 days of service of the statement of costs upon her;
- c. Kept the North Carolina State Bar Membership Department advised of her current business and home addresses;
- d. 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;
- e. Has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state;
- f. Has complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension. *The State Bar does not send CLE notices to members who are suspended, so it is Defendant's obligation to contact the appropriate department on a timely basis, ascertain her CLE obligations during her suspension, and timely satisfy those obligations;*
- g. Has been examined, at her own expense, within three months prior to the filing the petition, by a board certified psychiatrist approved by the North Carolina State Bar and obtained a written report from that psychiatrist setting forth: (i) the findings of the examination; and (ii) the psychiatrist's opinion as to whether Defendant has any physical or mental condition that could adversely affect her ability to practice law;
- h. Prior to or at the time of filing her petition, provided a copy of the psychiatrist's report described in paragraph (g) to the State Bar, and executed a written release authorizing the examining psychiatrist to provide medical records to, and communicate with, the Office of Counsel of the North Carolina State Bar regarding the evaluation and report;
- i. Paid restitution in the amount of \$1,000.00 to Scott Grady;
- j. Paid restitution in the amount of \$1,200.00 to Gregory Thomas
- k. Paid restitution in the amount of \$1,200.00 to Angela Forbes;

- l. Paid restitution in the amount of \$2,500.00 to Charlotte Woolard;
and
- m. In the event her former clients Kathy Hardison and/or Thomas and
Linda Thigpen obtain a judgment against Smith for recovery of
unearned legal fees, that she has satisfied those judgments.

Signed by the Chair with the consent of the other Hearing Committee members,
this the 19 day of May, 2008.



Sharon B. Alexander, Chair
Disciplinary Hearing Committee