

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 6

THE NORTH CAROLINA STATE BAR,

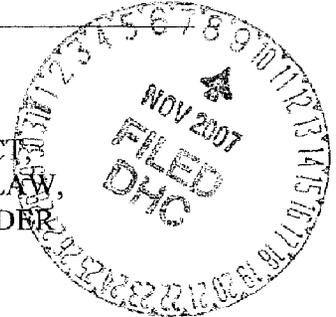
Plaintiff

v.

KEITH L. CLARK, Attorney,

Defendant

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



This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, and members J. Michael Booe and Donald G. Willhoit. Carmen K. Hoyme and Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Keith L. Clark, 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, Keith L. Clark, was admitted to the North Carolina State Bar on 21 August 1977 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, Clark actively engaged in the practice of law in the State of North Carolina and maintained a law office in the town of Franklin in Macon County, North Carolina.

4. Clark 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. In or about November 1995, Eugenia Wright ("Wright") hired Clark to represent her in a property boundary dispute. She paid Clark \$3,500.00 as an advance on his hourly fees.
6. An associate at Clark's firm drafted a complaint for Wright's review.
7. Wright reviewed the complaint and directed Clark to file it.
8. Clark did not file Wright's complaint.
9. By letter dated 21 May 1998, Wright discharged Clark and requested an accounting of Clark's time spent on the case and a refund of any unearned fees.
10. Clark did not respond to Wright's 21 May 1998 letter.
11. Wright reiterated her request for an accounting and a refund of unearned fees by letter to Clark dated 12 September 2000.
12. Clark received Wright's letter by certified mail on 13 September 2000.
13. Clark did not respond to Wright's 12 September 2000 letter.
14. On 31 January 2001, Wright filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Wright's fee dispute was assigned file number 01FD0026.
15. The State Bar sent a notice of Wright's fee dispute to Clark's Franklin office on or about 31 January 2001. Clark received this letter by certified mail on 6 February 2001.
16. Clark was required to respond within fifteen days of receipt of the notice of fee dispute, as specified in the notice. Clark failed to respond to the notice of fee dispute.
17. The State Bar sent Clark a second notification of Wright's fee dispute on or about 24 April 2001. Clark received this second notice by certified mail on 27 April 2001.
18. Clark was required to respond within ten days of receipt of the second notice. Clark failed to respond to the second notice.
19. The State Bar sent Clark a third notification of Wright's fee dispute by certified mail on or about 15 June 2001.
20. Clark was required to respond within ten days of receipt of this third notice. Clark failed to respond to the third notice.

21. In July 2001, a representative of the State Bar's fee dispute resolution program left several telephone messages for Clark regarding Wright's fee dispute. Clark did not return the July 2001 calls from the State Bar.

22. On 18 July 2001, the State Bar opened a grievance file against Clark for failure to participate in the fee dispute resolution process concerning Wright's fee dispute. This grievance was assigned file number 01G0802.

23. The State Bar issued a letter of notice to Clark on or about 27 August 2001, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Wright matter by certified mail on 30 August 2001.

24. Clark was required to respond within fifteen days of receipt of the letter of notice. He failed to respond.

25. On or about 3 October 2001, the State Bar sent Clark a follow-up letter that noted his failure to respond to the letter of notice. An additional follow-up letter was sent on or about 30 April 2002. Clark received this follow-up letter by certified mail on 6 May 2002. Despite these reminders, Clark failed to respond to the State Bar's letter of notice regarding the Wright matter.

26. In or about September 2000, Mark Claxton ("Claxton") hired Clark to pursue reimbursement of payments on a mortgage held by Claxton that had erroneously been paid to American Note Investments.

27. Claxton paid Clark \$500.00 in advance, based on Clark's estimate of the number of hours it would take him to perform the necessary legal services for Claxton.

28. In June 2001, after receiving no communication from Clark for several months, Claxton went to Clark's office and asked for his client file.

29. When Claxton obtained his client file from Clark in June 2001, the only documents in Claxton's file were those originally provided to Clark by Claxton.

30. Clark did not send a demand letter on behalf of Claxton or take any other action in Claxton's case.

31. By letter sent on or about 25 June 2001, Claxton terminated the representation and requested an accounting of Clark's activities and a refund of unearned fees.

32. Clark did not respond to Claxton's 25 June 2001 letter.

33. Claxton reiterated his request for an accounting and a refund of unearned fees by certified letter received by Clark on or about 14 July 2001.

34. Clark did not respond to Claxton's 14 July 2001 letter.
35. On 10 August 2001, Claxton filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Claxton's fee dispute was assigned file number 01FD0303.
36. The State Bar sent a notice of Claxton's fee dispute to Clark's Franklin office on or about 16 August 2001. Clark received this letter by certified mail on 20 August 2001.
37. Clark was required to respond within fifteen days of receipt of the notice of fee dispute, as specified in the notice. Clark failed to respond to the notice of fee dispute.
38. The State Bar sent Clark a second notification of Claxton's fee dispute on or about 14 September 2001. Clark received this second notice by certified mail on 21 September 2001.
39. Clark was required to respond within ten days of receipt of this second notice. Clark failed to respond to the second notice.
40. On 17 October 2001, the State Bar opened a grievance file against Clark for failure to participate in the fee dispute resolution process concerning Claxton's fee dispute. The grievance was assigned file number 01G1190.
41. On or about 6 December 2001, the State Bar issued a letter of notice to Clark, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Claxton matter by certified mail on 11 December 2001.
42. Clark was required to respond within fifteen days of receipt of the letter of notice. He failed to respond.
43. On or about 9 January 2002, the State Bar sent Clark a follow-up letter that noted his failure to respond to the letter of notice. Clark was required to respond to the follow-up letter by 18 January 2002. He failed to respond by that deadline.
44. In a response dated 30 January 2002 and received by the State Bar on 1 February 2002, Clark showed that he had refunded Claxton's \$500.00 fee plus \$150.00 in expenses and lost interest.
45. Clark's 30 January 2002 letter indicated that he would explain his failure to participate in the fee dispute resolution process in a subsequent response.
46. The State Bar did not receive a subsequent response explaining Clark's failure to participate in the fee dispute process.

47. On or about 9 August 2000, Rosemary Linvill ("Linvill") retained Clark to represent her in a dispute over the amount owed to Linvill's father on a purchase money note. Linvill paid Clark \$3,500.00 in advance for the representation.

48. On or about 14 August 2000, Clark accepted a check from the opposing party for the payoff amount of \$56,392.56.

49. Clark did not deposit the \$56,392.56 check into his trust account or any other account.

50. Clark did not verify with Linvill prior to accepting the check from the opposing party that the amount of \$56,392.56 was the full payoff amount on the note held by Linvill.

51. When Clark notified Linvill of his receipt of the check for \$56,392.56 for full payment of the note, Linvill notified Clark that the full payoff amount was \$57,717.24.

52. Linvill expected Clark to collect the remaining outstanding balance from the opposing party.

53. For the next several months, Linvill did not receive any communication from Clark and Clark did not return her telephone calls, letters, or emails.

54. On or about 30 October 2000, Linvill asked that Clark immediately send her the \$56,392.56 check and provide an accounting of his activities on her behalf.

55. Clark sent the \$56,392.56 payoff check to Linvill on 31 October 2000.

56. By letter dated 16 November 2000, Linvill terminated the representation and requested an accounting of Clark's time and a refund of any unearned fees.

57. Clark did not respond to Linvill's 16 November 2000 requests for a refund and an accounting, or to subsequent communications from Linvill in which she reiterated those requests.

58. On 12 March 2001, Linvill filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Linvill's fee dispute was assigned file number 01FD0091.

59. The State Bar sent a notice of Linvill's fee dispute to Clark's Franklin office on or about 15 March 2001. Clark received this letter by certified mail on 20 March 2001.

60. Clark was required to respond within fifteen days of receipt of the notice of fee dispute, as specified in the notice. Clark failed to respond to the notice of fee dispute.

61. The State Bar sent Clark a second notification of Linvill's fee dispute on or about 24 April 2001. Clark received this second notice by certified mail on 27 April 2001.

62. Clark was required to respond within ten days of receipt of this second notice. Clark failed to respond within that time period.

63. Clark's response to Linvill's fee dispute was received by the State Bar on 22 June 2001. Therein, Clark offered to refund \$2,600.00 of the fees paid by Linvill.

64. Linvill rejected Clark's offer of a \$2,600.00 refund.

65. By follow-up letter dated 4 September 2001, the fee dispute mediator requested that Clark document how he had earned the \$900.00 of Linvill's fee he sought to retain. Clark was required to respond to this follow-up letter within fifteen days.

66. Clark did not respond to the follow-up letter requesting that he account for the \$900.00 paid by Linvill to which Clark believed he was entitled.

67. On 23 October 2001, the State Bar opened a grievance file against Clark for failure to participate in the fee dispute resolution process concerning Linvill's fee dispute. This grievance was assigned file number 01G1215.

68. The State Bar issued a letter of notice to Clark on or about 6 December 2001, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Linvill matter by certified mail on 11 December 2001.

69. Clark was required to respond within fifteen days of receipt of the letter of notice. He failed to respond.

70. On or about 9 January 2002, the State Bar sent Clark a follow-up letter that noted his failure to respond to the letter of notice. An additional follow-up letter was sent on 30 April 2002. Clark received this letter by certified mail on 6 May 2002. Despite these additional reminders, Clark failed to respond to the letter of notice in the Linvill matter.

71. On or about 10 July 2000, Owen L. Nix ("Nix") hired Clark to file an action on his behalf for child custody and visitation. Nix paid Clark \$2,500.00 as an advance on Clark's hourly fees.

72. Clark filed the action for visitation, negotiated an agreement with the opposing party, and filed a consent judgment in Nix's case.

73. After the consent judgment was entered in September 2000, Nix requested an accounting of Clark's time spent on the case and a refund of any unearned fees.

74. Clark did not respond to Nix's request for an accounting and a refund.

75. On 20 March 2001, Nix filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Nix's fee dispute was assigned file number 01FD0113.

76. The State Bar sent a notice of Nix's fee dispute to Clark's Franklin office on or about 17 April 2001. Clark received this letter by certified mail on 20 April 2001.

77. Clark was required to respond within fifteen days of receipt of the notice of fee dispute, as specified in the notice. Clark failed to respond to the fee dispute within that time period.

78. By letter dated 20 June 2001 and received by the State Bar on 22 June 2001, Clark partially responded to Nix's fee dispute, but did not provide an accounting of the hours he spent on Nix's case.

79. By letter dated 4 September 2001, the State Bar fee dispute mediator requested that Clark submit an accounting of the \$2,500.00 paid by Nix.

80. Clark did not respond to the State Bar's 4 September 2001 letter.

81. Because Clark failed to respond to the 4 September 2001 request, the fee dispute file was closed and the State Bar opened a grievance file against Clark for failure to participate in good faith in the fee dispute resolution process concerning Nix's fee dispute. This grievance was opened on 23 October 2001 and assigned file number 01G1216.

82. The State Bar issued a letter of notice to Clark on or about 6 December 2001, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Nix matter by certified mail on 11 December 2001.

83. Clark was required to respond within fifteen days of receipt of the letter of notice. He failed to respond within that time period.

84. On or about 9 January 2002, the State Bar sent Clark a follow-up letter that noted his failure to respond to the letter of notice. Clark was required to respond to this follow-up letter by 18 January 2002. Clark failed to respond by that deadline.

85. Clark's response to the letter of notice in the Nix matter was received by the State Bar on 1 February 2002. The response showed that Clark had sent an accounting to Nix on 30 January 2002.

86. Clark's response further indicated that he would explain his failure to participate in the fee dispute resolution process in a subsequent response.

87. The State Bar did not receive a subsequent response explaining Clark's failure to participate in the fee dispute process.

88. On or about 25 November 1997, Clark represented R. Douglas Stanley ("Stanley") in a real estate closing in which Stanley was the buyer.

89. Among the funds held in trust by Clark in connection with the Stanley closing was \$50.00 designated to pay the title insurance premium to Fidelity National Title Insurance ("Fidelity").

90. Clark did not pay the \$50.00 premium to Fidelity nor did he submit a final title opinion to Fidelity.

91. Clark failed to properly reconcile his trust account between about 25 November 1997 and about November 2001, and failed to realize that he still held \$50.00 of Stanley's loan proceeds in his trust account.

92. When Stanley was preparing to refinance the property in the fall of 2001, he asked Clark for the title insurance policy number from Fidelity.

93. In November 2001, after Stanley contacted him about the policy, Clark secured a title insurance policy from Commonwealth Title Insurance.

94. On 27 November 2001, Stanley filed a grievance with the State Bar regarding Clark's failure to pay Fidelity the title insurance premium and failure to obtain the title insurance. Stanley's grievance was assigned file number 01G1360.

95. The State Bar issued a letter of notice to Clark on or about 17 January 2002, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Stanley matter by certified mail on 19 January 2002. Clark's response to the letter of notice was received by the State Bar on 1 February 2002.

96. By letter dated 30 April 2002, the State Bar requested additional information from Clark regarding the Stanley matter. Clark did not respond to the State Bar's 30 April 2002 letter.

97. In or about April 2002, Mr. and Mrs. Ray Popper ("the Poppers") retained Clark to represent them in an adverse possession action. The Poppers paid Clark \$5,000.00 as an advance on his hourly fees.

98. From June 2002 through November 2002, the Poppers made repeated phone calls and sent letters by facsimile to Clark inquiring about the status of the case. Clark did not respond to their inquiries.

99. Clark received interrogatories from the opposing party in the Poppers' case on or about 6 June 2002.

100. Clark did not respond to the interrogatories, nor did he inform the Poppers of the receipt of the interrogatories or their obligation to respond thereto.

101. On 27 September 2002, the court entered an order compelling the Poppers to respond to the opposing party's discovery requests.

102. Clark did not inform the Poppers of the court's order.

103. On 5 November 2002, Clark notified the Poppers by facsimile that they were required to appear at a show cause hearing the following day (6 November 2002) regarding their non-compliance with the court's prior order compelling discovery.

104. At the 6 November 2002 hearing, the court imposed a \$421.50 fine as a sanction for the Poppers' failure to respond to discovery requests.

105. On 27 January 2003, the Poppers filed a grievance with the State Bar regarding Clark's failure to communicate and neglect of their case. The Poppers' grievance was assigned file number 03G0153.

106. The State Bar issued a letter of notice to Clark on or about 6 February 2003, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Popper matter by certified mail on 24 February 2003.

107. Clark was required to respond within fifteen days of receipt of the letter of notice. He failed to respond within that time period.

108. On or about 14 March 2003, the State Bar sent Clark a follow-up letter that noted his failure to respond to the letter of notice. Clark was required to respond to the follow-up letter by 28 March 2003. Clark failed to respond by that deadline.

109. Clark's response to the letter of notice in the Popper matter was received by the State Bar on 14 April 2003.

110. On or about 20 August 2001, Kenneth Hart, Jr. ("Hart") retained Clark to represent him in a property boundary dispute. Hart paid Clark \$2,500.00 in advance for his services.

111. Hart told Clark that "time was of the essence" because an adjoining tract was being developed and Hart believed the development would encroach upon his land. Clark told Hart he would investigate his case and be in contact by mid-September.

112. Clark did not contact Hart by mid-September, so Hart called Clark four times during October and early November 2001 to inquire about the case. Clark did not promptly return Hart's calls.

113. Clark called Hart on 9 November 2001 to say he needed to look at the property and would call Hart again by 14 November 2001. Clark did not call Hart back by 14 November 2001.

114. After Hart called Clark several more times, Clark agreed to meet with Hart in January 2002. When Hart subsequently attempted to schedule the January 2002 meeting, Clark did not respond.

115. As of July 2002, Clark had not completed the work Hart hired him to perform. Clark did not respond to multiple letters and telephone calls from Hart.

116. By certified letter dated 19 August 2002, Hart requested a refund of the \$2,500.00 he had paid to Clark.

117. Clark did not respond to Hart's 19 August 2002 letter, or to a letter from Hart's wife dated 30 September 2002 reiterating Hart's request for a refund.

118. On 9 May 2003, Hart filed a grievance with the State Bar regarding Clark's lack of communication and neglect of Hart's legal matter. Hart's grievance was assigned file number 03G0777.

119. The State Bar issued a letter of notice to Clark on or about 16 May 2003, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Hart matter by certified mail on 19 May 2003.

120. Clark was required to respond within fifteen days of receipt of the letter of notice. He failed to respond within that time period.

121. On or about 13 June 2003, the State Bar sent Clark a follow-up letter that noted his failure to respond to the letter of notice. Clark was required to respond to this follow-up letter by 23 June 2003. Clark failed to respond by that deadline.

122. Clark's response to the letter of notice in the Hart matter was received by the State Bar on 23 July 2003.

123. By follow-up letter dated 12 September 2003, the State Bar requested additional information, including whether Clark had refunded the fees paid by Hart.

124. Clark was required to respond to the 12 September 2003 follow-up letter within ten days of receipt. He failed to respond within that time period.

125. The State Bar didn't receive verification from Clark that he had refunded Hart's fees until 12 January 2004.

126. Randall D. Tilson ("Tilson") retained Clark in or about January 2004 to handle the administration of his mother's estate. Tilson paid Clark a \$1,500.00 fee for legal services, plus \$300.00 to be held in escrow for payment of fees.

127. The estate was opened on or about 20 January 2004, and Clark assisted Tilson in preparing the initial inventory for the estate. Clark published the notice to creditors in or about March 2004.

128. On several occasions, Clark failed to attend scheduled meetings with Tilson regarding administration of the estate.

129. Clark informed Tilson that administration of the estate would take approximately six to nine months.

130. Beginning in or about October 2004, approximately nine months after the estate was opened, Tilson repeatedly requested that Clark file the final accounting for the estate.

131. Clark did not return Tilson's phone calls inquiring about the status of the estate and requesting that Clark prepare the final accounting.

132. Clark did not respond to Tilson's requests for the final accounting until April 2005.

133. In or about April 2005, Clark left a proposed final accounting with the Clerk of Court for Tilson to sign and file.

134. The final accounting of the estate left by Clark with the Clerk of Court did not contain a complete record of disbursements from the estate, and Tilson was required to complete it himself before it could be filed.

135. When Tilson returned the completed final accounting to the Clerk in April 2005, the Clerk informed him that the only remaining requirement to close the estate was payment of the \$77.00 estate fee.

136. Tilson asked Clark to pay the \$77.00 fee out of the funds Tilson had paid to Clark, which included \$300.00 for payment of fees.

137. Clark assured Tilson he would send the estate fee to the Clerk immediately.

138. Clark had not paid the estate fee by 1 July 2005, when Tilson paid the \$77.00 himself.

139. Clark did not remit payment for the \$77.00 estate fee until 27 July 2005.

140. On 18 May 2005, Tilson filed a grievance against Clark with the State Bar. Tilson's grievance was assigned file number 05G0588.

141. The State Bar issued a letter of notice to Clark on or about 10 June 2005, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Tilson matter by certified mail on 27 June 2005.

142. Clark was required to respond within fifteen days of receipt of the letter of notice. He failed to respond within that time period.

143. On or about 20 July 2005, the State Bar sent a follow-up letter reminding Clark of his obligation to respond to the grievance. Clark responded by letter dated 22 July 2005, which was received by the State Bar on 25 July 2005.

144. The State Bar sent Clark another follow-up letter on or about 11 October 2005 specifically requesting information about the work done to justify the fee Clark believed he had earned in the Tilson matter.

145. Clark did not respond to the State Bar's 11 October 2005 letter.

146. On or about 21 November 2005, the State Bar sent Clark another letter reiterating the request for information contained in its 11 October 2005 letter. The 21 November 2005 letter indicated that if Clark did not provide the requested information within ten days, he would be subpoenaed.

147. By letter to the State Bar dated 29 November 2005, Clark showed that he had refunded \$750.00 to Tilson but did not account for his work on the case as requested in the State Bar's 11 October 2005 and 21 November 2005 letters.

148. Clark performed legal services for Drake Enterprises ("Drake") from 1990 through 2002.

149. On or about 10 June 2002, Clark borrowed \$103,500.00 from Drake to pay personal indebtedness to the Internal Revenue Service.

150. Clark still performed legal services for Drake at the time he borrowed \$103,500.00 from Drake.

151. The parties agreed that the \$103,500.00 loan would be secured by a 233-acre tract of land owned by Clark, and further agreed that Clark would sell the land and repay Drake from the proceeds of the sale.

152. At the time of the 10 June 2002 loan, the entire 233-acre tract of land was under contract for sale.

153. The buyers breached the original sales contract but, after various negotiations, purchased about half of the tract in June 2004.

154. Clark did not notify Drake that the June 2004 sale had occurred.

155. Clark did not apply the proceeds of the June 2004 sale to repay the \$103,500.00 debt owed to Drake.

156. Clark did not respond to Drake's communications regarding the loan or Drake's requests for payment.

157. On 4 August 2005, the Chairman of the Board of Drake Enterprises, Phil Drake, and the President of Drake Enterprises, Tim Hubbs, filed a grievance with the State Bar regarding Clark's conduct in connection with the loan. Clark's grievance was assigned file number 05G0823.

158. The State Bar issued a letter of notice to Clark on or about 9 August 2005, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Drake matter by certified mail on 23 August 2005.

159. Clark was required to respond within fifteen days of receipt of the letter of notice. He failed to respond within that time period.

160. On or about 16 September 2005, the State Bar sent a follow-up letter reminding Clark of his obligation to respond to the grievance. Clark was required to respond to the follow-up letter by 22 September 2005. He failed to respond by that deadline.

161. Deputy Counsel contacted Clark by phone regarding the Drake matter on 23 September 2005, at which time Clark requested an extension of time to respond.

162. Clark was granted an extension until 30 September 2005. Clark's response to the State Bar's letter of notice in the Drake matter was received 4 October 2005.

163. On or about 4 March 2004, Chris Merritt ("Merritt") retained Clark to assist him in settling his mother's estate. Merritt paid Clark \$1,850.00 in advance for his services.

164. Merritt signed the preliminary documents for administration of the estate, including the Application for Probate and Letters and the Oath of Executor, on or about 28 July 2004.

165. In August 2004, Clark told Merritt he was publishing the notice to creditors and that the ninety-day "advertisement period" was about to begin.

166. Clark had not published the notice to creditors for Merritt's mother's estate when he told Merritt he had done so in August 2004.

167. From approximately August 2004 through March 2005, Merritt received no communication from Clark.

168. When Merritt reached Clark by phone in March 2005, Clark informed him that the estate administration process was "almost complete."

169. Clark had not "almost completed" administration of Merritt's mother's estate when he told Merritt the process was almost complete in March 2005.

170. Clark did not open Merritt's mother's estate until 27 July 2005.

171. From April 2005 through August 2005, Clark failed to respond to Merritt's telephone calls and letters inquiring about the status of the estate.

172. By email on or about 31 August 2005, Clark told Merritt that Merritt's mother's estate had only been opened earlier that month.

173. Clark promised Merritt he would conclude administration of the estate within 90 days, by 1 December 2005.

174. Clark failed to close the estate by the 1 December 2005 deadline, or at any later date.

175. On 9 December 2005, Merritt filed a grievance with the State Bar regarding Clark's lack of communication and neglect of his mother's estate. Merritt's grievance was assigned file number 05G1334.

176. The State Bar issued a letter of notice to Clark on or about 28 December 2005, advising him that a grievance had been filed against him. Clark received the letter of notice regarding the Merritt matter by certified mail on 31 December 2005.

177. Clark did not respond to the letter of notice or to the State Bar's follow-up letters dated 26 January 2006 and 7 February 2006.

178. In or about April 2004, Paul A. Kirkham ("Kirkham") hired Clark to transfer title to a mobile home that had belonged to Kirkham's father prior to his death.

179. Kirkham paid Clark \$300.00, which included a \$50.00 filing fee.
180. Clark did not deposit the \$300.00 received from Kirkham into his trust account.
181. Clark did not respond to Kirkham's telephone calls throughout October and November 2004 inquiring about the transfer of title.
182. In response to Kirkham's request for assistance, a representative of the State Bar's Client Assistance Program (CAP) contacted Clark in November 2004.
183. After he was contacted by CAP, Clark communicated with Kirkham, indicating that the transfer of title had not occurred because the original Affidavit of Authority to Assign Title was not properly executed by all of Kirkham's father's heirs and therefore was not accepted by the Macon County Clerk of Court.
184. Kirkham took the necessary steps to correct the deficiencies in the Affidavit, and returned the documents to Clark via certified mail on or about 19 January 2005.
185. On or about 25 February 2005, Kirkham contacted the DMV and learned that Clark still had not completed the transfer.
186. On or about 1 March 2005, Kirkham sent a letter to Clark requesting that Clark refund his fee and turn over his file. Clark did not respond.
187. On 14 March 2005, Kirkham filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Kirkham's fee dispute was assigned file number 05FD0125.
188. The State Bar sent a notice of Kirkham's fee dispute to Clark's Dillsboro office on or about 14 March 2005. Clark received this letter by certified mail on 1 April 2005.
189. Clark was required to respond within fifteen days of receipt of the notice of fee dispute, as specified in the notice. Clark failed to respond to the notice of fee dispute.
190. The State Bar sent Clark a second notification of Kirkham's fee dispute by letter dated 31 March 2005. Clark received this letter by certified mail on 12 April 2005.
191. Clark was required to respond within ten days of receipt of this second notice. Clark did not respond to the second notice.

192. On 16 May 2005, the State Bar opened a grievance file against Clark for failure to participate in the fee dispute resolution process initiated by Kirkham. This grievance was assigned file number 05G0581.

193. The State Bar issued a letter of notice to Clark on or about 10 June 2005, advising Clark that a grievance had been filed against him. Clark received the letter of notice regarding the Kirkham matter by certified mail on 27 June 2005.

194. Clark was required to respond within fifteen days of receipt of the letter of notice. He failed to respond within that time period.

195. On or about 20 July 2005, the State Bar sent Clark a follow-up letter that noted his failure to respond to the letter of notice. This letter required Clark to respond no later than 28 July 2005. Clark failed to respond by that date.

196. The State Bar did not receive a response from Clark in the Kirkham matter until 8 August 2005. Clark's response indicated that, by letter to Kirkham dated 21 June 2005, Clark had refunded \$300.00 and Kirkham's original title to the mobile home.

197. In or about October 2004, Amy Jon Rouse ("Rouse") retained Clark to represent her in a child custody matter.

198. Clark received a \$3,500.00 fee from Rouse's mother, Julia Rouse, for his representation of Rouse.

199. Thereafter, Clark did not respond to repeated telephone messages from Rouse inquiring about the status of her case.

200. Clark did not prepare a complaint in Rouse's case until May 2006.

201. Rouse reviewed the draft complaint and signed the verification page in or about May 2006, but Clark did not file the complaint.

202. Rouse received no communication from Clark after August 2006.

203. In February 2007, Rouse discharged Clark and requested a refund of \$3,000.00.

204. Clark did not respond to Rouse's request for a refund.

205. On 17 May 2007, Julia Rouse filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Rouse's fee dispute was assigned file number 07FD0264.

206. The State Bar sent a notice of Rouse's fee dispute to Clark's Dillsboro office on or about 17 May 2007. Clark received this letter by certified mail on 5 June 2007.

207. Clark was required to respond within fifteen days of receipt of the notice of fee dispute, as specified in the notice. Clark failed to respond to the notice of fee dispute.

208. On or about 6 May 2005, Roy W. Thillberg ("Thillberg") retained Clark to file suit to recover payment for work performed by Thillberg's construction company.

209. Thillberg paid Clark a \$1,500.00 fee for his services and a \$125.00 filing fee.

210. On at least one occasion in which Clark and Thillberg scheduled a telephone meeting to discuss Thillberg's case, Clark failed to call Thillberg at the pre-arranged time.

211. In a letter to Thillberg dated 1 November 2005, Clark told Thillberg that he could expect his case to be docketed sometime in January 2006.

212. For at least six months thereafter, Thillberg was unable to reach Clark because Clark's phone was disconnected, and registered letters from Thillberg to Clark were returned unclaimed.

213. Thillberg's case was not set for hearing in January 2006.

214. On or about 24 October 2006, Clark contacted Thillberg and indicated that they needed to meet urgently regarding Thillberg's case.

215. When Thillberg and Clark met the following day, Clark and Thillberg discussed responses to the opposing party's discovery requests.

216. At the conclusion of the 25 October 2006 meeting, Clark asked Thillberg to sign and notarize a "blank response" to discovery.

217. Clark told Thillberg he would fill in the written discovery responses and send the completed document to Thillberg.

218. Thillberg left several subsequent voicemail messages for Clark, but received no further communication or documentation from Clark.

219. Thillberg learned from the Haywood County Clerk of Court that Clark had entered a Notice of Voluntary Dismissal of Thillberg's case on 21 November 2006.

220. Clark dismissed Thillberg's case without Thillberg's knowledge or consent, and did not notify Thillberg of the dismissal.

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Committee and the Committee has jurisdiction over the Defendant, Keith L. Clark, and the subject matter.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline as follows:

- (a) By failing to file a complaint on Wright's behalf, failing to send a demand letter or take any other action on Claxton's behalf, failing to obtain Stanley's title insurance policy from November 1997 through November 2001, failing to respond to discovery requests in the Poppers' case, failing to take any action on Hart's behalf regarding the boundary dispute, failing to promptly perform the final accounting and promptly pay the filing fee in Tilson's mother's estate, failing to open Merritt's mother's estate for approximately one year after Merritt completed the necessary paperwork, failing to transfer title to Kirkham's mobile home, and failing to timely prepare or file the complaint on behalf of Rouse, Clark failed to act with reasonable diligence and promptness in representing his clients in violation of Rule 1.3;
- (b) By failing to communicate with Wright, Linvill, the Poppers, Hart, Tilson, Merritt, Kirkham, Rouse, and Thillberg about their cases or respond to their inquiries about their cases and/or for accountings of fees paid, Clark failed to keep his clients reasonably informed about the status of their cases and failed to comply promptly with clients' reasonable requests for information in violation of Rule 1.4(a);
- (c) By failing to respond to Linvill's request for an accounting and failing to respond to Nix's request for an accounting prior to the State Bar's involvement, Clark failed to promptly comply with his clients' requests for information in violation of Rule 1.4(a) and, with respect to Nix, failed to render a written accounting of trust funds when reasonably requested by his client in violation of Rule 1.15-3(d);
- (d) By failing to notify the Poppers of the interrogatories and the court's order compelling discovery, Clark failed to keep his clients reasonably informed about the status of their case in violation of Rule 1.4(a)
- (e) By informing Merritt that he had published the notice to creditors when he had not done so, and by telling Merritt the estate administration process was "almost complete" when he had not yet opened the estate, Clark failed to keep his client reasonably informed about the status of his case in violation of Rule 1.4(a)(3), failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of Rule 1.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (f) By dismissing Thillberg's case without notifying Thillberg or obtaining Thillberg's authorization, Clark failed to abide by a client's decisions

concerning the objectives of the representation in violation of Rule 1.2(a), and failed to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation in violation of Rule 1.4(b);

- (g) By collecting fees from Wright, Claxton, and Rouse, and then failing to perform the legal services for which Wright, Claxton, and Rouse had paid the fees, Clark collected clearly excessive fees in violation of Rule 1.5(a) and by failing to refund the unearned portion of fees he received from Wright, Claxton, Linvill, and Rouse, Clark failed to protect his clients' interests upon termination of the representation in violation of Rule 1.16(d);
- (h) By failing to respond to the State Bar's notices of fee disputes filed by Wright, Claxton, Linvill, Kirkham, and Rouse, and failing to timely and completely respond to the fee dispute filed by Nix, Clark failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f);
- (i) By failing to deposit the \$300.00 received from Kirkham, which included a \$50.00 filing fee, into his trust account, Clark failed to promptly deposit trust funds into his trust account in violation of Rule 1.15-2(b), and failed to deposit mixed funds intact in violation of Rule 1.15-2(g);
- (j) By failing to refund any unearned portion of the \$3,500.00 he received from Wright, Clark failed to promptly deliver to the client funds belonging to the client, in violation of Rule 1.15-2(m);
- (k) By failing to pay Stanley's title insurance premium and failing to pay the estate filing fee as requested by Tilson, Clark failed to promptly pay entrusted funds to third parties as directed by his clients in violation of Rule 1.15-2(m);
- (l) By failing to examine the individual client balance for funds held in his trust account for Stanley and by failing to send Stanley annual written accountings of funds held in trust for Stanley from 1997 through 2001, Clark failed to properly reconcile his trust account in violation of Rule 1.15-3(c), and failed to render written accountings to his client at least annually in violation of Rule 1.15-3(d);
- (m) By failing to respond to the State Bar's letters of notice in the Wright, Linvill, and Merritt matters, failing to timely and/or completely respond to the letters of notice in the Claxton, Nix, Popper, Hart, Tilson, Drake, and Kirkham matters, failing to timely and/or completely respond to the State Bar's follow up letters in the Hart and Tilson matters, and failing to respond to the State Bar's follow up letter in the Stanley matter, Clark

failed to respond to lawful inquiries of a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3); and

- (n) By failing to inform Drake of the partial sale of the 233-acre tract which he had agreed would secure Drake's loan and failing to apply the proceeds of the partial sale to repayment of the loan, Clark engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

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. Clark's misconduct is aggravated by the following factors:
 - a. pattern of misconduct;
 - b. multiple offenses;
 - c. substantial experience in the practice of law; and
 - d. vulnerability of the victims.
2. Clark's misconduct is mitigated by the following factors:
 - a. absence of a prior disciplinary record;
 - b. personal or emotional problems; and
 - c. with respect to Claxton, Hart, Tilson, and Kirkham, timely good faith efforts to make restitution or to rectify consequences of misconduct.
3. The aggravating factors outweigh the mitigating factors.
4. Defendant has engaged in conduct that has caused significant harm to his clients.
5. The conduct of Defendant caused actual harm to the standing of the legal profession, undermining his clients' trust and confidence in lawyers and the legal system.
6. Defendant's failure to participate in good faith in the State Bar's fee dispute resolution program 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.

7. 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.

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

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

Based upon the foregoing factors and with the consent of the parties, the Hearing Committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, Keith L. Clark, is hereby suspended for five years. This suspension shall go into effect 30 days from the mailing of this order to Clark at the address of record for Clark held by the Membership Department of the State Bar.

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

3. Clark 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 his trust account, to his former clients or initiating appropriate escheat procedures. Defendant shall file an affidavit certifying he has complied with the wind down rule with the Secretary of the North Carolina State Bar within 30 days of the effective date of this order.

4. After serving three years of the active suspension of his license, Defendant may apply for a stay of the remaining period of suspension upon filing a petition with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125 of the North Carolina State Bar Discipline & Disability Rules, Clark has complied with the following conditions:

a. Disbursed all remaining funds currently held in his trust account to the appropriate clients, or initiate appropriate escheat procedures, within 30 days of the mailing of this order to him;

b. Provided the State Bar with documentation showing disbursement of all remaining funds in his trust account and/or the initiation of appropriate escheat procedures and a release authorizing the State Bar to obtain bank records to verify these disbursements no later than 45 days after the mailing of this order to Clark;

c. Paid the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of notice of the costs being mailed to him at his address of record; and

d. Responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in each communication.

5. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he complies with the following conditions:

a. Defendant will respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication.

b. Defendant will advise the State Bar in writing of all address changes within 10 days of the change.

c. Defendant will timely comply with his State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline.

d. Defendant will not violate the laws of any state or of the United States.

e. Defendant will not violate any provision of the Revised Rules of Professional Conduct.

6. If an order staying any period of this suspension is entered and Defendant fails to comply with any one or more of the conditions referenced in Paragraph 5, 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. 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 4 (a) – (d) above before seeking reinstatement of his license to practice law, and must provide in his application

for reinstatement clear, cogent, and convincing evidence showing his compliance therewith.

8. 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 any stayed suspension.

Signed by the Chair with the consent of the other hearing committee members, this the 10th day of November, 2007.



T. Richard Kane, Chair
Disciplinary Hearing Committee

CONSENTED TO BY:



Carmen K. Hoyme, Deputy Counsel
Attorney for Plaintiff



Keith L. Clark
Defendant