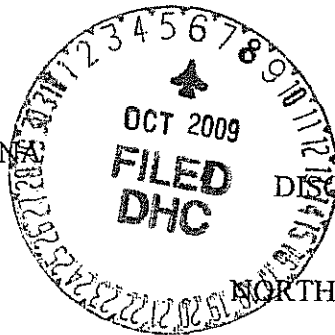


STATE OF NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

MICHAEL J. ANDERSON, Attorney,

Defendant.

CONSENT ORDER
OF DISCIPLINE

This matter was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of Theodore C. Edwards II, Chair, J. Michael Booe, and Johnny A. Freeman. Melissa D. Donahue and Margaret T. Cloutier represented Plaintiff. Defendant appeared pro se. The 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 consents to the order of discipline, waives a formal hearing in this case, and waives his right to appeal this consent order or challenge in any way the sufficiency of the findings, the conclusions of law or the discipline imposed. Based on the consent of the parties, the Hearing Committee hereby enters the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Michael J. Anderson ("Defendant"), was admitted to the North Carolina State Bar in 1995 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 Rules of Professional Conduct.

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

4. Defendant was properly served with process and a hearing in this matter was set with due notice to all parties.
5. Keisha McClaston ("McClaston") retained Defendant to represent her in a personal injury matter.
6. McClaston and Defendant agreed Defendant's fee would be one-third of the amount McClaston received in recovery for her injuries.
7. On or about June 24, 2008, Defendant communicated an offer of settlement from the opposing party of \$7,500.00 to McClaston.
8. On or about August 4, 2008, Defendant filed a lawsuit on McClaston's behalf in Wilson County District Court bearing file number 08 CVD 1526.
9. On or about September 8, 2008, Defendant sent McClaston a written notice of an offer of judgment in case number 08 CVD 1526 for \$7501.00.
10. On or about September 18, 2008, McClaston terminated her attorney client relationship with Defendant.
11. At the time McClaston terminated Defendant's representation, no judgment had been entered in McClaston's lawsuit and no offer of settlement had been accepted by McClaston.
12. On or about September 18, 2008, Defendant filed a document entitled Notice of Lien in McClaston's lawsuit (case number 08 CVD 1526) in Wilson County District Court. Defendant did not pursue fees in *quantum meruit* after settlement or judgment was entered in the case.
13. The Notice of Lien filed by Defendant asserted "a lien on the proceeds of any recovery made herein for an attorney's fee in the amount of one-third of \$7,501.00 and costs incurred in the amount of \$104.00."
14. On or about December 11, 2008, McClaston settled her personal injury claim and Defendant collected one-third of the settlement amount plus costs totaling \$2,604.00 in payment of his purported lien.
15. Defendant asserted entitlement to a lien for attorney's fees before settlement of or judgment on the claim of a former client, and subsequently collected those fees pursuant to his assertion.
16. Defendant knew or should have known he was not entitled to file his Notice of Lien for attorney's fees under North Carolina law.

17. By filing the Notice of Lien, Defendant knew or should have known he made a false statement of law to the court, to McClaston, to the opposing party and to opposing counsel.

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. An attorney charging lien is “an equitable lien which gives an attorney the right to recover his fees from a fund recovered by his aid. The charging lien attaches not to the cause of action, but to the judgment at the time it is rendered.” *Covington v. Rhodes*, 38 N.C. App. 61, 247 S.E.2d 305 (1978) (internal quotation marks omitted) (citations omitted). “The well established law in North Carolina is that no right to an attorney’s charging lien exists when an attorney working pursuant to a contingent fee agreement withdraws prior to settlement or judgment being entered in the case.” *Mack v. Moore*, 107 N.C. App. 87, 418 S.E.2d 685 (1992). See also, *Wilson v. Wilson*, 183 N.C. App. 276, 644 S.E.2d 379 (2007); *Howell v. Howell*, 89 N.C. App. 115, 365 S.E.2d 181 (1988); and *Dillon v. Consolidated Delivery, Inc.*, 43 N.C. App. 395, 258 S.E.2d 829 (1979).

3. Defendant’s foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that he violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows:

a. By filing the Notice of Lien for attorney’s fees to which he was not entitled under North Carolina law, Defendant asserted a claim which had no basis in law and fact in violation of Rule 3.1, knowingly made a false statement of law to the tribunal in violation of Rule 3.3(a), knowingly made a false statement of law to a third person in violation of Rule 4.1, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

b. By asserting entitlement to a lien for attorneys fees before settlement of or judgment on his former client’s claim and subsequently collecting fees pursuant to such an assertion, Defendant charged and collected an attorney fee in an improper manner in violation of Rule 1.5(a) and made a false or misleading communication regarding his services in violation of Rule 7.1(a).

Based upon the consent of the parties, the Hearing Committee hereby makes additional

FINDINGS OF FACT AND CONCLUSIONS REGARDING DISCIPLINE

1. McClaston was a vulnerable victim because as a lay person she relied on Defendant's assertions. McClaston felt obligated to pay Defendant once she received a letter from the insurance company regarding her settlement and Defendant's Notice of Lien.
2. Defendant acknowledges his conduct was contrary to North Carolina case law and that he was not entitled to make an assertion for attorney's fees in his Notice of Lien.
3. Defendant has assured the Hearing Committee he will not repeat the conduct in the future.
4. Defendant's misconduct is aggravated by the following factors:
 - a. Substantial experience in the practice of law;
 - b. Multiple offences; and
 - c. Vulnerability of the victim.
5. Defendant's misconduct is mitigated by the following factors:
 - a. Absence of a prior disciplinary record;
 - b. Remorse; and
 - c. Full and free disclosure to the Hearing Committee or cooperative attitude toward proceedings.
6. The mitigating factors outweigh aggravating factors.
7. The Hearing Committee has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in determining the appropriate discipline to impose in this case.
8. Defendant's assertion of an attorney charging lien threatens harm to the public and the integrity and standing of the legal profession by undermining the public's trust and confidence in lawyers and the legal system. However, the Hearing Committee finds and concludes that under the circumstances of this case the public will be adequately protected by admonishing Defendant not to continue or repeat such conduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings and Conclusions Regarding Discipline and upon consent of the parties, the Hearing Committee enters the following

ORDER OF DISCIPLINE

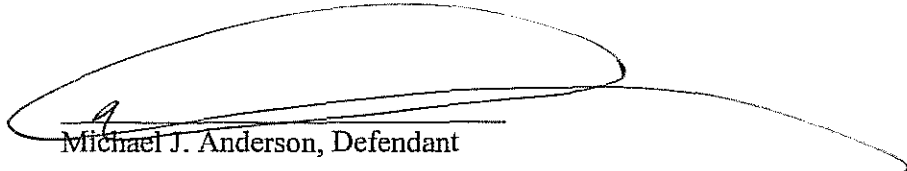
1. Defendant is hereby ADMONISHED for his professional misconduct.


2. Defendant is taxed with the costs of this action, including the cost of the deposition taken, as assessed by the Secretary. Defendant shall pay the costs within thirty days of service of the notice of costs upon him.


Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 29th day of September, 2009.


THEODORE C. EDWARDS II, CHAIR
HEARING COMMITTEE

CONSENTED TO:


Michael J. Anderson, Defendant


Melissa D. Donahue, Deputy Counsel
Attorney for Plaintiff


Margaret T. Cloutier, Deputy Counsel
Attorney for Plaintiff