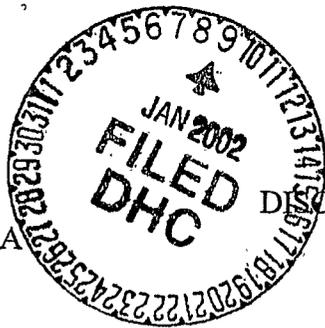


WAKE COUNTY  
NORTH CAROLINA



17967

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
01 DHC 7

THE NORTH CAROLINA STATE BAR  
Plaintiff

v.

DAVID R. DOWELL, ATTORNEY  
Defendant

CONSENT ORDER  
OF DISCIPLINE

THIS MATTER came on before the undersigned hearing committee of the Disciplinary Hearing Commission composed of Fred H. Moody, Jr., Chair; Richard T. Gammon and Lorraine Stephens. Carolin Bakewell represented the State Bar. Alan M. Schneider represented the defendant, David R. Dowell.

Both parties have agreed to waive formal hearing in this matter and stipulate and agree to the following findings of fact and conclusions of law and to the discipline imposed. Based upon the agreement of the parties and the evidence in the record, the hearing committee enters the following:

FINDINGS OF FACT

1. The 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. The Defendant, David R. Dowell (hereafter, Dowell), was admitted to the North Carolina State Bar in 1991, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all or a portion of the relevant periods referred to herein, Dowell was engaged in the practice of law in the State of North Carolina.

4. Prior to October 1993, Shawn Maciel (hereafter, Maciel), was convicted by a military court of assisting in the murder of Rhonda Kaspers (hereafter, Ms. Kaspers).

5. In October 1993, Dowell undertook to pursue post-conviction relief for Maciel.

6. Dowell reviewed a 3,500 page trial transcript; prepared and filed a clemency petition; prepared and filed an appellate brief before the United States Army Court of Military Review; argued the case on appeal before that Court; and prepared and filed a petition for review before the United States Court of Appeals for the Armed Forces. The petitions were denied.

7. Sometime in the spring of 1997, Maciel advised Dowell that Clayton Kaspers, Ms. Kaspers' widower, had signed an affidavit exonerating Maciel from any involvement in Ms. Kaspers' death.

8. Dowell agreed to pursue further post conviction relief on Maciel's behalf based upon Kaspers' affidavit.

9. Despite this assurance, Dowell failed to pursue any further relief on Maciel's behalf.

10. Dowell failed to communicate effectively with Maciel after August 1997 concerning Maciel's case.

11. Dowell failed to return the unearned portion of the fees paid by Maciel, in the amount of \$1,000.

12. Dowell was suspended from the practice of law by the DHC in September 1999 for matters unrelated to Maciel's case. His law license has not been reinstated.

13. Dowell now lives in Alabama, is employed in a non-legal position and does not intend to engage in the practice of law in North Carolina.

Based upon the foregoing Findings of Fact and the consent of the parties, the hearing committee enters the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the person of David R. Dowell and the subject matter of this proceeding.

2. The defendant's conduct, as set out in the Findings of Fact, above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b)(2) in that:

a) By failing to pursue some form of post conviction relief based upon Kaspers' affidavit, Dowell neglected a legal matter entrusted to him in violation of Rule 6(b)(3) of the former Rules of Professional Conduct and/or Rule 1.3 of the Revised Rules of Professional Conduct.

b) By failing to communicate effectively with Maciel regarding the status of Maciel's post conviction case after August 1997, Dowell failed to communicate with a client in violation of Rule 6(b)(1) of the former Rules of Professional Conduct and/or Rule 1.4 of the Revised Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law and based upon the consent of the parties concerning the appropriate discipline, the hearing committee hereby makes additional:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
  - a) substantial experience in the practice of law;
  - b) prior discipline;
  - c) failure to respond to the substance of grievance.
2. The defendant's misconduct is mitigated by the following factors:
  - a) the defendant experienced significant personal and psychological problems which contributed to the misconduct;
  - b) passage of time since the misconduct occurred;
  - c) the misconduct occurred at approximately the same time as misconduct which is the subject of a prior disciplinary order in N.C. State Bar v. Dowell, 99 DHC 16;
  - d) the misconduct was not motivated by dishonesty or selfishness.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following:

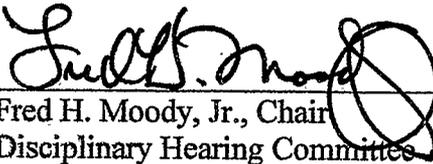
#### ORDER OF DISCIPLINE

1. The defendant, David R. Dowell, is hereby censured for his misconduct.

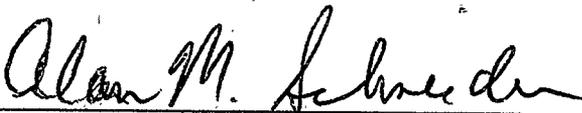
2. The defendant shall refund \$1,000 to Ron Maciel, the father of Shawn Maciel, no later than 30 days from service of this order upon the defendant.

3. The defendant shall pay the costs of this proceeding no later than 30 days from the date of service of this order upon Dowell.

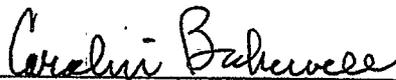
Signed by the Chair with the consent of the hearing committee members,  
this the 7 day of ~~December~~, 2002  
January

  
Fred H. Moody, Jr., Chair  
Disciplinary Hearing Committee

Seen and consented to:

  
Alan M. Schneider, Defendant's Attorney

  
David R. Dowell, Defendant

  
Carolin Bakewell, Plaintiff's Attorney