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NORTH CAROLINA

1977 JUL 25 AM 9:30

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

WAKE COUNTY

B.F. JAMES, SEC.
THE N.C. STATE BAR

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

HUBERT SENTER, Attorney,
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause coming on to be heard and being heard before the undersigned Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on July 8, 1977, at the offices of The North Carolina State Bar, Raleigh, North Carolina, at 10:00 o'clock a.m., and said Hearing Committee having heard the evidence, make the following findings of fact:

1. 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 in Chapter 84, General Statutes of North Carolina.

2. The defendant, Hubert Senter, is a citizen and resident of Franklin County, North Carolina, and was admitted to The North Carolina State Bar in September 1952 and is, and was at all times referred to herein, an Attorney at Law, licensed to practice law in the State of North Carolina, subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and the laws of the State of North Carolina.

3. On January 24, 1973, Thea A. Bergstedt commenced an action in the District Court of Wake County, 73 CVD 593, against Bobby Lee Seagroves for property damage. In his answer in said action, Bobby Lee Seagroves counterclaimed for property damage against Thea A. Bergstedt, both claim and counterclaim arising out of a collision occurring on December 3, 1972, between automobiles owned by said parties.

4. On March 9, 1973, plaintiff Lela Ray Seagroves, represented by Hubert H. Senter, Esquire, commenced an action in the Superior Court of Wake County, 73 CVS 2139, against defendants Kevin Wayne Bergstedt and Thea Antonson Bergstedt, for personal injuries arising out of said collision on December 3, 1972. In their answer, said defendants counter-claimed against the plaintiff for property damage to the automobile owned by defendant Thea Bergstedt and arising out of said collision.

5. On April 10, 1973, defendants Bergstedt, as third party plaintiffs, commenced an action against third party defendant Bobby Lee Seagroves for contribution by reason of said third party defendant's alleged conduct preceding said collision.

6. Pursuant to a Motion to Consolidate the above-entitled actions for trial made by defendants Bergstedt on October 2, 1973, under the provisions of Rule 42 of the North Carolina Rules of Civil Procedure, said actions were consolidated for trial in the Wake County Superior Court by Order entered by the Honorable Hamilton H. Hobgood on November 9, 1973.

7. These actions had been calendared for trial on at least four occasions during 1974, 1975, and 1976 but were automatically continued due to their not being reached for trial during the specified session. Prior to September 7, 1976, these actions were calendared for trial on June 7, 1976, but were continued due to an injury to the Honorable Clarence W. Hall on the day preceding said session.

8. On July 24, 1976, Hubert H. Senter submitted a calendar request that these actions be set for trial, without specifying a date therefor, whereupon the Calendar Clerk of Wake County set the same as the first case for trial on September 9, 1976. Copies of the tentative trial calendar were duly mailed in apt time to all counsel of record stating that the Calendar Committee would meet on August 16, 1976, to consider motions for continuances and to set the final trial calendar.

Pursuant to the final trial calendar duly mailed in apt time to all counsel of record, calendar call for the aforesaid session of court was held on September 7, 1976, to call the session's cases. At neither the calendar meeting on August 16, 1976, nor the call of the calendar on September 7, 1976, did the said Hubert H. Senter appear or theretofore move the Court to continue these actions.

9. Beginning at noon on September 7, 1976, the Honorable Donald L. Smith, Judge Presiding, continuously tried to contact Hubert H. Senter in an attempt to commence the trial of these actions during the afternoon of September 8, 1976, for the purpose of selecting a jury. None of the calls made by the Court were returned to the Court by Hubert H. Senter.

10. Immediately prior to the opening of Court on September 9, 1976, for business as aforesaid, a person unknown to the Court delivered to and filed with the undersigned a Notice of voluntary Dismissal of Lela Ray Seagroves' action for personal injury in case no. 73 CVS 2139 made pursuant to Rule 41 (a)(i) of the North Carolina Rules of Civil Procedure.

11. At the time and place the Court was opened for the transaction of business as aforesaid, all parties were present when these actions were called for trial.

12. Richard C. Titus, Esquire, and Richard M. Lewis, Esquire, of Maupin, Taylor & Ellis, P.A., counsel for defendants Bergstedt, were present at said time and place and declared to be ready for trial.

13. Paul L. Cranfill, Esquire, of Teague, Johnson, Patterson, Dilthey & Clay, counsel for third party defendant Bobby Lee Seagroves, was present at said time and place and declared to be ready for trial.

14. Hubert H. Senter, counsel for plaintiff Lela Ray Seagroves, was absent, though the said Lela Ray Seagroves and her husband, Bobby Lee Seagroves, were present.

15. Due to the absence of plaintiff Lela Ray Seagroves' counsel, Hubert H. Senter, and the readiness of

defendants Bergstedt and third party defendant Bobby Lee Seagroves, and their counsel, to proceed with trial, the Court called said plaintiff and said third party defendant to be sworn and testify regarding said Notice of Voluntary Dismissal.

16. Judge Smith explained to plaintiff Lela Ray Seagroves the meaning of said Notice of Voluntary Dismissal and the ramifications thereof, whereupon said plaintiff testified that her last contact with her counsel, Hubert H. Senter, was approximately a month ago; that she had received a letter last week from her said counsel directing her to appear in Court on September 9, 1976, at 9:30 a.m. for trial of these actions; that she only learned of said Notice of Voluntary Dismissal at the call of these cases for trial as aforesaid; that her said counsel had not contacted her regarding said Notice of Voluntary Dismissal; that at no time had she authorized her said counsel to file said Notice of Voluntary Dismissal; and that she did not desire to dismiss her claim against defendants Bergstedt.

17. Third party defendant Bobby Lee Seagroves testified at said hearing that he is the husband of plaintiff Lela Ray Seagroves and did not know until the call of these actions for trial as aforesaid that said Notice of Voluntary Dismissal had been filed.

18. At the conclusion of the testimony of said plaintiff and said third party defendant, said plaintiff, appearing pro se, moved the Court for leave to have the said Hubert H. Senter removed as her counsel of record in order that said plaintiff may obtain different counsel to represent her in these actions.

19. Richard C. Titus, Esquire, of counsel for defendants Bergstedt, noted in open court in the presence of all parties that since these actions had heretofore appeared on that Court's Clean Up Calendar, the call of which commenced on August 2, 1976, the Honorable James H. Pou Bailey had peremptorily calendared these actions for trial during the Second October Regular Civil Session of this Court as the first case

for trial on October 18, 1976, to commence at 10:00 a.m. A copy of the calendar of cases for said Second October Regular Civil Session of this Court was given to plaintiff in open court.

20. Upon the conclusion of the testimony by Lela Ray Seagroves and her husband, Bobby Lee Seagroves, Judge Donald Smith entered an Order setting aside said Notice of Voluntary Dismissal and continuing the consolidated actions ex mero motu to the Second October Regular Civil Session of Wake County Superior Court as the first case for trial on October 18, 1976. It was further ordered that the plaintiff's counsel of record, Hubert H. Senter, be removed from any further representation of the plaintiff or any party in those actions.

21. Based upon the foregoing findings of fact, the Hearing Committee makes the following conclusions of law:

A. The conduct of the defendant as set forth above constitutes a violation of Chapter 84, Section 28 (B)(2) of the General Statutes of North Carolina in that he failed to seek the lawful objectives of his client, Lela Ray Seagroves, through reasonably available means permitted by law in that he failed to appear on her behalf and he took a dismissal in the aforementioned case without consulting or seeking approval from his client in violation of Disciplinary Rule 7-101(A)(1) of the Code of Professional Responsibility.

B. The defendant engaged in professional conduct prejudicial to the administration of justice in willfully failing to appear before the Court at a time when he knew that a matter was scheduled for trial therein and that the defendant engaged in professional conduct adversely reflecting upon his fitness to practice law in failing to appear before the Court and in taking a dismissal of his client's case without consulting or seeking approval from his client, in violation of Disciplinary Rule 1-102(A)(5)(6) of the Code of Professional Responsibility.

C. The conduct of the defendant as set forth above does not constitute a violation of North Carolina General Statutes 84-28 (b)(2), in that The North Carolina State Bar failed to show that he intentionally prejudiced or damaged his client during the course of the professional relationship in violation of Disciplinary Rule 7-101(A)(3) of the Code of Professional Responsibility of The North Carolina State Bar.

This the 25th day of July, 1977.

Warren C. Stack
Warren C. Stack, Chairman

Mary Alice Warren
Mary Alice Warren

E. James Moore
E. James Moore

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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
B.E. JAMES, SEC. DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
HUBERT SENTER, Attorney,)
Defendant)

ORDER OF PUBLIC CENSURE

This cause coming on to be heard and being heard before a Hearing Committee appointed by the Chairman of the Disciplinary Hearing Commission, to wit: Warren C. Stack, Chairman, E. James Moore, and Mary Alice Warren, on July 8, 1977 in the office of The North Carolina State Bar, 107 Fayetteville Street, Raleigh, North Carolina, at 10:00 o'clock a.m., and

The plaintiff being represented by C. Christopher Bean and the defendant being present and represented by his attorney, Eugene Boyce, and the trial committee having heard the evidence, and having made certain findings of fact and conclusions of law, on July 8, 1977, all as appears of record herein;

NOW, THEREFORE, based upon such findings of fact and conclusions of law, the trial committee of the Disciplinary Hearing Commission hereby issues the following Order of Public Censure to Hubert Senter, Attorney:

Pursuant to Section 23 of the Discipline and Disbarment Procedures of The North Carolina State Bar this Public Censure is delivered to you. You have been found to have violated the Code of Professional Responsibility of The North Carolina State Bar by a hearing committee of the Disciplinary Hearing Commission sitting on July 8, 1977.

The fact that this Public Censure is not the most serious of possible discipline provided for in General Statute 84-28 should not be taken by you to indicate that The North

Carolina State Bar in any way feels that your conduct in this matter was excusable or was considered by the members of the hearing committee of the Disciplinary Hearing Commission to be anything less than a very serious and substantial violation of the Code of Professional Responsibility.

You have been found to have failed to seek the lawful objectives of your client through reasonably available means permitted by law in failing to appear on her behalf and in taking a dismissal in her case without consulting or seeking approval from her. You have furthermore been found to have engaged in conduct prejudicial to the administration of justice and adversely reflecting on your fitness to practice law, all in violation of the Code of Professional Responsibility. Your conduct with respect to this representation, in addition to its reflection upon you and the entire Bar of this State, has caused much unnecessary distress to your client. Your conduct was unprofessional. It violated not only the letter but also the spirit of the Code of Professional Responsibility of The North Carolina State Bar. It was not such conduct as is expected of a member of the legal profession. It brings discredit upon you and tends to place the courts of this State and your fellow members of the Bar in disrepute and further damages both in the eyes of the public. You placed a privilege that you hold as a lawyer to serve the public in serious jeopardy.

The North Carolina State Bar is confident that this Public Censure will be heeded by you, that it will be remembered by you, and that it will be beneficial to you. We are confident that you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession. Accordingly, we sincerely trust that this Public Censure, instead of being a burden, will actually serve as a profitable reminder to weigh carefully your responsibility to the public, your clients, your fellow attorneys, and the court, with the result

that you will be known as a respected member of our profession whose word and conduct may be relied upon without question.

Pursuant to Section 23 of the Rules of Disciplinary Procedure, it is Ordered that a certified copy of this Public Censure be entered upon the judgment docket of the Superior Court of Franklin County and of the Superior Court of Wake County and also upon the minutes of the Supreme Court of North Carolina.

Issued this the 10th day of July, 1977.

Warren C. Stack
Warren C. Stack, Chairman

E. James Moore
E. James Moore

Mary Alice Warren
Mary Alice Warren