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78 DHC 7 and 78 DHC 11
THE DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

THE NORTH CAROLINA STATE BAR,)
)
 Plaintiff,)
)
 v.)
)
 REGINALD L. FRAZIER, Attorney,)
)
 Defendant.)

ORDER

FILED
1991 JAN -9 AM 9:37
BENJAMIN STEPHENS
CLERK

This matter came on to be heard upon the defendant's motion made in the above cases to dismiss the actions against him for the failure of the State Bar to comply with its own procedural rules and for the further failure of the State Bar to accord the defendant due process and equal protection of the laws. More specifically, in his motion and oral argument in support of said motion, the defendant alleges that the State Bar failed to issue a letter of notice to him as required by Article IX, Section 5, Subsection (a)(4) of the Rules and Regulations of the North Carolina State Bar, said failure constituting a violation of the Rules and a violation of the defendant's right to due process and equal protection. The defendant further argues that the lack of standards or guidelines for the issuance or non-issuance of letters of notice violates his rights of due process and equal protection.

FINDINGS OF FACT

1. It is stipulated by the parties, and the Committee so finds, that no letter of notice was issued to the defendant in these cases, as provided in Article IX, Section 5(a)(4) and Section 12.

2. There are no standards, policies or guidelines to govern the circumstances under which the Chairman of the Grievance Commission shall issue or withhold letters of notice to accused

attorneys.

3. Absent any such standards or guidelines, the Chairman would have no way to determine which cases are appropriate for issuance of letters of notice and which cases are not.

4. The issuance or non-issuance of a letter of notice may have a substantial impact upon whether or not formal and public charges are brought against an accused attorney. The purpose of a letter of notice as provided in the rules is to permit an accused attorney to respond to the factual basis of a grievance against him and, upon providing a satisfactory response, to avert the costly, time-consuming and embarrassing prospect of a public hearing concerning said grievance.

5. The opportunity to respond to the underlying facts concerning the grievance prior to the institution of formal charges is a substantial benefit to an accused attorney.

CONCLUSIONS OF LAW

Upon the foregoing findings of fact and upon the basis of the record as a whole, the Committee concludes:

1. That the provisions of Article IX, Section 5, Subsection (a) (4) require the Chairman of the Grievance Commission to issue letters of notice to accused attorneys.

2. Article IX, Section 12, Subsections (2) and (3), while not altogether clear, are of like import and in no way relieve the Chairman of the duty to issue letters of notice as provided in Article IX, Section 5, Subsection (a) (4).

3. Even if Article IX, Section 5, Subsection (a) (4) and Section 12 should be read so as not to require the issuance of a letter of notice in every case, the absence of standards or guidelines governing the issuance and non-issuance of letters of notice constitutes a violation of due process and equal protection, in violation of the State and Federal Constitution.

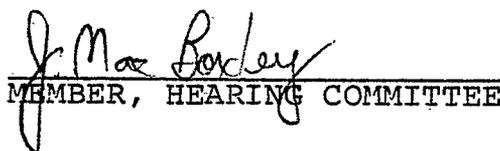
4. The failure of the State Bar to issue a letter of notice in these cases violated the defendant's rights protected by the Rules and Regulations of the State Bar and the Constitutions of the State of North Carolina and the United States.

WHEREFORE, pursuant to Rule 41(b) of the Rules of Civil Procedure, the actions against the defendant in the above cases are hereby dismissed without prejudice.

This 25th day of December, 1978.


CHAIRMAN, HEARING COMMITTEE


MEMBER, HEARING COMMITTEE


MEMBER, HEARING COMMITTEE

To the foregoing Findings of Fact and Conclusions of Law, the plaintiff objects and accepts and in open hearing gives notice of appeal. The plaintiff is allowed sixty (60) days within which to make-up and serve the case on appeal on the defendant. The defendant is allowed thirty (30) days thereafter to file countercase or exceptions.


CHAIRMAN, HEARING COMMITTEE


MEMBER, HEARING COMMITTEE


MEMBER, HEARING COMMITTEE