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THE DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

FILED
1979 JAN 9 AM 9 37
BEFORE THE DISCIPLINARY HEARING COMMISSION

THE NORTH CAROLINA STATE BAR, Plaintiff,	)	
v.	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGINALD L. FRAZIER, Attorney, Defendant.	)	

Pursuant to applicable law, the Hearing Commission held a hearing in the above case on November 27 and 28, 1978 in Raleigh, North Carolina, at which time evidence was presented by the plaintiff, the North Carolina State Bar, and by the defendant, Reginald L. Frazier. Upon the conclusion of said hearing, the Committee makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On September 11, 1976, Martin Chaim Trocki, Herbert Karl Lowenstein and Richard Bronski (hereinafter referred to as "complainants"), were arrested in Dare County, North Carolina and charged with felonious possession of marijuana in case nos. 76 CR 2960, 2961 and 2962.

2. A first appearance in the District Court of Dare County was scheduled in these cases for September 17, 1976.

3. On September 15, 1976, the complainants contacted the defendant, Attorney Reginald L. Frazier, requesting his services in representing them on the foregoing charges. Attorney Frazier agreed to represent them in the District Court of Dare County for a fee of $333.33 each.

4. On September 16, 1976, a representative of Attorney Frazier's office contacted the Clerk's office in Dare County by telephone and made a request that the first appearance be

continued. Ms. Virginia Ballance of the Dare County Clerk's Office advised the calling party that any continuance of the cases would have to be authorized by the presiding District Court Judge, John T. Chaffin. Judge Chaffin was not holding Court on September 16, 1976, but was scheduled to hold Court on September 17, 1976.

5. Attorney Frazier initiated a call to Judge Chaffin on the morning of September 17, 1976, but was unable to speak to the Judge because Court had already convened and the Judge was unavailable. Attorney Frazier left word for Judge Chaffin to return his call.

6. ~~Shortly~~ Sometime thereafter, Judge Chaffin returned Attorney Frazier's call and Attorney Frazier requested a continuance. Judge Chaffin advised Attorney Frazier that the complainants had already been called and failed. Attorney Frazier then requested that the bond forfeiture be stricken. Attorney Frazier testified that Judge Chaffin advised that he would refuse to strike the bonds, but that he would continue the case and the matter of the bond forfeiture could be taken up at such time as the case was rescheduled.

7. It was Attorney Frazier's understanding from his telephone conversation with Judge Chaffin that the cases would be continued until October 1, 1976. The District Court jacket for each case contained a notation that the cases were continued until October 8, 1976.

8. On September 17, 1976, Attorney Frazier mailed an entry of appearance to the Dare County District Court, limiting his appearance to the District Court. This entry of appearance arrived in the Dare County Clerk of Court's office on September 2[illegible] 1976.

9. On September 23, 1976, each of the three complainants executed a power of attorney, prepared by Attorney Frazier, waiving their appearance in the District Court of Dare County and

authorizing him to appear for them and to do all things which he deemed necessary in their best interest.

10. On September 24, 1976, Mr. Frazier prepared and filed the following motions on behalf of each of the complainants: Motion For Production of Evidence and Disclosure of Witnesses, Motion to Suppress, Motion For Bill of Particulars and a Motion to Compel Disclosure of All Evidence Favorable to Defendants. These motions were filed in the District Court on September 25, 1976.

11. On October 1, 1976, Attorney Frazier was out of the State, but had made prior arrangements with his law partner, Thomasine Moore, to appear for the complainants and to represent them in the Dare County District Court. Attorney Frazier had briefed Ms. Moore on the facts and strategy for the case prior to October 1, 1976, including the information regarding the bond forfeitures of September 17, 1976.

12. In an effort to more fully familiarize herself with the facts of the case, Ms. Moore contacted the complainants by phone on the evening of September 30, 1976. At this time, the complainants expressed some disturbance over the fact that Attorney Frazier would not personally be present at the hearing on October 1, 1976. Ms. Moore assured them that she was competent to handle the matter and further requested that they personally attend the hearing on October 1, 1976. The complainants refused Ms. Moore's request that they personally appear and authorized her to proceed to act in their behalf.

13. The complainants were aware that a bond forfeiture had been entered and discussed the same with Ms. Moore on the evening of September 30, 1976.

14. On October 1, 1976, Ms. Moore travelled from her home in New Bern, North Carolina to Manteo, North Carolina, where the

District Court of Dare County was sitting. The roundtrip drive from New Bern to Manteo is approximately six hours. When Ms. Moore arrived at the District Court of Dare County, the Court session had just begun and Ms. Moore discovered that the complainants' cases were not on the calendar for that date. She advised the District Attorney that she had been told by Attorney Frazier that the cases were continued until October 1, 1976 and that she therefore expected them to be on the calendar. She was directed to the Clerk's office where she spoke with Ms. Ballance and, with the approval of the presiding District Court Judge, Grafton Beaman, all three of the cases were added on. Ms. Moore attempted to negotiate a misdemeanor plea in these cases, but was unable to do so because the Assistant District Attorney, Mr. Christopher Bean, advised her that since the cases were felonies, any negotiations would have to take place in the Superior Court.

15. Ms. Moore also requested Judge Beaman to strike the bond forfeiture, but Judge Beaman refused to do so because the complainants were not present and he did not want to change an order entered by another District Court Judge. He suggested to Ms. Moore that she might later seek to have the bond forfeiture and order of arrest stricken.

16. Pursuant to the authorization of the complainants, Ms. Moore waived the personal appearance of the complainants and waived the probable cause hearing. An appropriate order was entered by Judge Beaman allowing the waivers.

17. While in Dare County, Ms. Moore spent approximately two hours talking with investigating officers and doing a factual investigation in order to further prepare for plea negotiations or trial in Superior Court.

18. It was expressly understood between Mr. Frazier and the complainants that the $333.33 fee which they each paid was

solely for representation in the District Court and that if the complainants wished for Mr. Frazier to represent them in the Superior Court, there would be a substantial added fee.

19. On October 6, 1976, the complainants advised Mr. Frazier that they were terminating his services as their attorney and that they had no desire for him to represent them in the Superior Court or on any pending matters.

20. Shortly thereafter, the complainants retained John Martin, who was then a member of the Dare County Bar, to represent them in Superior Court. On January 10, 1977, the complainants personally appeared for trial of their cases in the Dare County Superior Court. The charges were reduced to misdemeanor possession of marijuana in each of the cases and each of the complainants pleaded guilty and was given a fine and suspended sentence.

21. No effort was made to arrest the defendants when they personally appeared in Dare County on January 10, 1977 and no action has been taken to effectuate the bond forfeiture. ~~Although the bond forfeiture and order of arrest are matters of record, neither the Court, nor counsel, nor any other authority paid any attention to it during the Superior Court proceedings.~~ DMB Recd P.I.C.

CONCLUSIONS OF LAW

1. The plaintiff, the North Carolina State Bar, has failed to establish, by the greater weight of the evidence, that the defendant violated any of the disciplinary rules as alleged in the Complaint.

2. The conduct of the defendant in calling to a distant county requesting a continuance of the first appearance on the date of the first appearance, while not meeting the approval of this Committee, was not so unreasonable as to amount to neglect or unprofessional conduct.

WHEREFORE, the Complaint is dismissed for the failure of the plaintiff, the North Carolina State Bar, to establish, by the greater weight of the evidence, professional misconduct or neglect on the part of the defendant.

The costs of this action shall be taxed against the plaintiff.

This 26th day of December, 1978.

Ralph C. Hinds, Jr.
CHAIRMAN, HEARING COMMITTE

Philip D. Ellen
MEMBER, HEARING COMMITTEE

J. MacBarkley
MEMBER, HEARING COMMITTEE

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THE DISCIPLINARY HEARING COMMISSION
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THE NORTH CAROLINA STATE BAR, Plaintiff,	)	
v.	)	ORDER
REGINALD L. FRAZIER, Attorney, Defendant.	)	

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DEPUTIES SEC.
THE N.C. STATE BAR

Upon the failure of the plaintiff, the North Carolina State Bar, to establish the allegations of the Complaint by the greater weight of the evidence, this action is hereby dismissed and costs are taxed against the plaintiff.

This 26th day of December, 1978.

Ralph C. Hinson Jr.
CHAIRMAN, Hearing Committee

Philip D. Ellen
MEMBER, Hearing Committee

J. Mac Boxley
MEMBER, Hearing Committee