

6091

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
80 DHC 18

THE NORTH CAROLINA STATE BAR)	
Plaintiff,)	
)	<u>FINDINGS OF FACT</u>
-VS-)	and
)	<u>CONCLUSIONS OF LAW</u>
RODNEY COOK, Attorney,)	
Defendant.)	

This cause came on to be heard before the undersigned members of the Disciplinary Hearing Commission of the North Carolina State Bar, William Owen Cooke, Phillip Baddour, and Mary Cecile Bridges, comprising a duly constituted Hearing Committee on January 23, 1981 at 10:00 A.M. The North Carolina State Bar was represented by Mr. David R. Johnson, Esquire and the Defendant was present and represented by Thomas Farris, Esquire of the Wake County Bar. Prior to the hearing the parties entered into a proposed settlement agreement based upon certain admissions and stipulations of fact. The Hearing Committee accepts the proposed settlement agreement and accordingly adopts those stipulations as its FINDINGS OF FACT by clear, cogent, and convincing evidence.

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, Rodney A. Cook, was admitted to the North Carolina State Bar on September 27, 1974, 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 of the laws of the State of North Carolina.

3. At and during all of the times hereinafter referred to, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, North Carolina.

4. In late 1976 or early 1977, the exact date of which is unknown, the Defendant was approached by one Patricia M. Frendlich and her husband, Roy Frendlich, to represent her in a personal injury action against Vaughn's Super Market in Henderson, North Carolina, arising out of allegations that Mrs. Frendlich had fallen on the Super Market premises. Pursuant to that communication from the Frendlichs, Cook was provided with the documentary evidence by the Frendlichs for his review.

5. By letter dated April 28, 1977, the Defendant advised Mr. Roy Frendlich that he had reviewed the materials provided to the Defendant and expressed the Defendant's willingness to be employed upon retainer and at an hourly rate, a copy of which letter is attached to the Complaint in this action as Plaintiff's Exhibit A and is hereby incorporated by reference.

6. Pursuant to communications with the Frendlichs the Defendant was paid \$250.00 to investigate, evaluate, and report to the Frendlich's the validity of Mrs. Frendlich's claim.

7. By letter dated May 24, 1977, the Defendant acknowledged receipt of the retainer check and agreed to research and investigate the matter and report the findings to the Frendlichs, a copy of which letter is attached to the Complaint in this action as Plaintiff's Exhibit B and is hereby incorporated by reference.

8. The Defendant agreed to refund to the Frendlichs at least \$100.00 if he elected not to pursue Mrs. Frendlich's claim following the Defendant's research as stated in Paragraph 7.

9. The Frendlichs reside in New Jersey.

10. The Frendlichs attempted to obtain information from the Defendant on the status of the personal injury action on several occasions, including by letter dated August 26, 1977; by telephone conversations in January and February, 1978; the calls being made collect by the Frendlichs; and by letter dated July 25, 1978. Additionally, the Frendlichs' attorney in New Jersey contacted the Defendant by letters dated August 16, 1978; September 19, 1978; and November 29, 1978. The Defendant did not respond to any of the letters in writing.

11. The Defendant did not send the Frendlichs any written correspondence following the May 24, 1977, letter (Exhibit B to the Complaint).

12. The Defendant did not make a written report of the results of his

investigation and research to the Fren dl ichs. Further, the Defendant did not advise the Fren dl ichs that he would no longer act on behalf of or represent Patricia Fren dl ich either in investigation, negotiation, or by filing suit in the personal injury action.

13. Defendant admits that he never definitely advised the Fren dl ichs that they did not have a lawsuit in his opinion or that he would not file a suit on Ms. Fren dl ich's behalf.

14. In July of 1979, the Fren dl ichs discharged the Defendant and employed new counsel, Kermit Ellis of the Vance County Bar. The Defendant advised Mr. Ellis that he would refund \$150.00 to the Fren dl ichs.

15. The Fren dl ichs did not received any money from the Defendant.

16. On or about December 28, 1978, the Fren dl ichs filed a grievance with the North Carolina State Bar.

17. On or about September 11, 1979, the Defendant received a Letter of Notice pursuant to Section 12 of the Discipline and Disbarment Rules from the Chairman of the Grievance Committee of the North Carolina State Bar requiring the Defendant's full and fair disclosure of all of the facts and circumstances concerning his handling of the matters as outlined above.

18. The Defendant failed to respond to the Letter of Notice.

19. On or about February 28, 1980, the Office of Counsel wrote to the Defendant asking him to respond to the Letter of Notice.

20. The Defendant failed to respond to the Letter of Notice following that correspondence.

21. On or about June 18, 1980, the Chairman of the Grievance Committee issued a subpoena pursuant to Section 12 of the Discipline and Disbarment Rules requiring the appearance of the Defendant at the quarterly meeting of the Grievance Committee of the North Carolina State Bar on July 9, 1980 at the Mid Pines Club in Southern Pines, North Carolina.

22. The Defendant failed to appear in response to the subpoena.

23. The Defendant received the subpoena issued by the Chairman of the Grievance Committee on June 20, 1980. On July 17, 1980, the Defendant telephoned the North Carolina State Bar and discussed the subpoena with David R. Johnson, Staff Attorney for the North Carolina State Bar and counsel for the Plaintiff in this action. The Defendant advised Mr. Johnson that he understood that he was to appear before the Grievance Committee on July 18, 1980, pursuant to the subpoena. Mr. Johnson advised the Defendant

that the date of the appearance was to have been July 9, 1980. The Defendant asked what steps he could take at that time and was advised that he could respond to the Letter of Notice and that the Chairman of the Grievance Committee would decide whether it was sufficient compliance with the subpoena. The Defendant advised Mr. Johnson that he would prepare the response that evening and hand deliver it to the North Carolina State Bar the next day. The Defendant did not deliver a response to the North Carolina State Bar.

24. The Defendant has, pursuant to the proposed settlement agreement, tendered to the Frenlich's \$150.00 as a refund of the fee paid as the Defendant admitted he would do in Paragraph 10 of the First Claim for Relief.

25. That by failing to keep his client adequately informed of the status of the legal matter from May, 1977, to July, 1979, the Defendant neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A) (3) of the Code of Professional Responsibility of the North Carolina State Bar.

26. By failing to keep his client adequately informed of the status of the legal matter, the Defendant intentionally failed to carry out a contract for professional services in violation of Disciplinary Rule 7-101(A) (2) of the Code of Professional Responsibility of the North Carolina State Bar.

27. By failing to keep his client adequately informed as to the status of the legal matter, the Defendant withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, and delivering to the client all papers and property to which the client is entitled in violation of DR 2-110(A) (2) of the Code of Professional Responsibility of the North Carolina State Bar.

28. By failing to refund any or all of the fee paid by his client after being discharged and after failing to keep his client informed of the status of the legal matter, the Defendant failed to refund the part of the fee paid in advance that had not been earned in violation of DR 2-110(A) (3) of the Code of Professional Responsibility of the North Carolina State Bar.

29. By failing to respond to the Letter of Notice issued by the Chairman of the Grievance Committee of the North Carolina State Bar, the Defendant failed to answer a formal inquiry issued by or in the name of the North Carolina State Bar in violation of North Carolina General Statute §84-28 (b) (3).

30. By failing to respond to the subpoena issued by the Chairman of the Grievance Committee the Defendant failed to answer a formal inquiry issued by or in the name of the North Carolina State Bar in violation of North Carolina General Statute §84-28(b) (3).

31. By failing to respond to the subpoena the Defendant engaged in professional conduct that adversely reflects on his fitness to practice law in violation of DR 1-102(A) (6) of the Code of Professional Responsibility of the North Carolina State Bar.

Based upon the foregoing FINDINGS OF FACT and the Stipulations of the parties, the Hearing Committee CONCLUDES AS A MATTER OF LAW that the conduct of the Defendant constitutes violations of North Carolina General Statute 84-28(b) and (c), in that:

1. By failing to keep his client adequately informed of the status of the legal matter from May, 1977, to July, 1979, the Defendant neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A) (3) of the Code of Professional Responsibility of the North Carolina State Bar.

2. By failing to keep his client adequately informed of the status of the legal matter, the Defendant intentionally failed to carry out a contract for professional services in violation of Disciplinary Rule 7-101(A) (2) of the Code of Professional Responsibility of the North Carolina State Bar.

3. By failing to keep his client adequately informed as to the status of the legal matter, the Defendant withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, and delivering to the client all papers and property to which the client is entitled in violation of DR 2-110(A) (2) of the Code of Professional Responsibility of the North Carolina State Bar.

4. By failing to refund any or all of the fee paid by his client after being discharged and after failing to keep his client informed of the status of the legal matter, the Defendant failed to refund the part of the fee paid in advance that had not been earned in violation of DR 2-110(A) (3) of the Code of Professional Responsibility of the North Carolina State Bar.

5. By failing to respond to the Letter of Notice issued by the Chairman of the Grievance Committee of the North Carolina State Bar, the Defendant failed to answer a formal inquiry issued by or in the name of

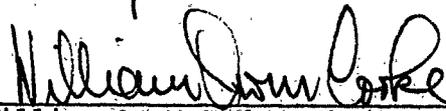
the North Carolina State Bar in violation of North Carolina General Statute §84-28(b)(3).

6. By failing to respond to the subpoena issued by the Chairman of the Grievance Committee the Defendant failed to answer a formal inquiry issued by or in the name of the North Carolina State Bar in violation of North Carolina General Statute §84-28(b)(3).

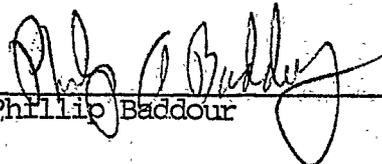
7. By failing to respond to the subpoena the Defendant engaged in professional conduct that adversely reflects on his fitness to practice law in violation of DR 1-102(A)(6) of the Code of Professional Responsibility of the North Carolina State Bar.

8. The Defendant did not intentionally prejudice or damage his client during the course of his professional relationship; and therefore, did not violate DR 7-101(A)(3).

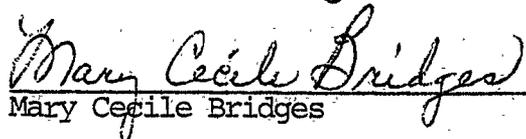
This the 6 day of FEBRUARY, 1981.



William Owen Cooke, Chairman
Disciplinary Hearing Committee



Phillip Baddour



Mary Cecile Bridges

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
80 DHC 18

THE NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

RODNEY A. COOK, Attorney,
Defendant.

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ORDER

THIS CAUSE was heard before the undersigned members of the Disciplinary Hearing Commission, William Owen Cooke, Phillip Baddour, and Mary Cecile Bridges, in a duly constituted Hearing Committee on January 23, 1981, and based upon the stipulations of the parties and the FINDINGS OF FACT AND CONCLUSIONS OF LAW entered and appearing of record herein, the Committee hereby ORDERS, ADJUDGES, AND DECREES that,

1. The discipline to be imposed upon the Defendant is a Public Censure.
2. A certified copy of the Public Censure will be entered upon the judgment docket of Wake County and also upon the minutes of the Supreme Court of North Carolina pursuant to Section 23 of the Discipline and Disbarment Rules of the North Carolina State Bar.
3. The costs of this action are hereby taxed to the Defendant.

This the 6 day of FEBRUARY, 1981.

William Owen Cooke

William Owen Cooke, Chairman
Disciplinary Hearing Committee

Phillip Baddour

Phillip Baddour

Mary Cecile Bridges
Mary Cecile Bridges

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WAKE COUNTY

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DISCIPLINARY HEARING COMMISSION
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80 DHC 18

1981 FEB 16 11 5 10

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
)
-vs-)
)
RODNEY A. COOK, Attorney,)
Defendant.)

PUBLIC CENSURE

This Public Censure is delivered to you pursuant to Section 23 of the Rules of Discipline and Disbarment of the North Carolina State Bar and pursuant to an Order of a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar in the above entitled proceeding, bearing date 6 day of FEBRUARY, 1980. You have been found to have violated the Code of Professional Responsibility of the North Carolina State Bar by said Hearing Committee at a hearing held on January 23, 1981.

The fact that this Public Censure is not the most serious of possible discipline provided for in North Carolina 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 any less than a very serious and substantial violation of the Code of Professional Responsibility. Described below is the course of conduct which involved the violations to which this censure pertains.

You agreed with Mrs. Patricia Frendlich to investigate, evaluate, and report to her the merits of a personal injury action on her behalf in May, 1977. Over the next two years, Mrs. Frendlich and her husband repeatedly attempted to communicate with you with regard to the status of the matter you agreed to handle. You made no written report or recommendation to the Frendlichs, nor did you file any Complaint on behalf of Mrs. Frendlich. You did not advise the Frendlichs that you would no longer act on behalf of or represent Mrs. Frendlich through further investigation, research, negotiation or suit although you admit that you performed no such services after your preliminary investigation. Finally, you did not ever advise the Frendlichs that they did not have grounds for a lawsuit or that you would not file suit on Mrs. Frendlich's behalf.

Implied in every contract of employment between an attorney and a client is a duty of the attorney to adequately communicate with and counsel the client. Additionally, in this particular situation you had a duty to advise the Frenlich's that you would either continue to vigorously pursue the claims or withdraw from the case. Your failure to do so constitutes the error and deviation from the Code of Professional Responsibility on your part.

More serious than your failure to adequately communicate with your client, however, is your conduct with respect to the Bar's inquiry once the grievance was filed by the Frenlich's. Under the Rules for Discipline and Disbarment of Attorneys, the Chairman of the Grievance Committee sent to you a Letter of Notice which required a "full and fair disclosure of all the facts and circumstances" concerning your conduct with regard to handling the legal matter of Mrs. Frenlich. You failed to deliver that response. The Office of Counsel of the North Carolina State Bar gave you an additional opportunity to respond by a reminder letter to which you also did not respond. Finally, the Chairman of the Grievance Committee issued a subpoena compelling your attendance before the Grievance Committee to testify with regard to your conduct. You failed to appear at the designated time and place. After the date of the subpoena, you advised the Office of Counsel that you would reply to the Bar's inquiry and you again failed to make such a reply.

Your failure to respond to the formal inquiries of the Bar, especially by failing to appear pursuant to the subpoena, not only violated North Carolina General Statute 84-28(b)(3), but also constituted conduct which adversely reflected on your ability to practice law. It is a duty of an attorney as an officer of the court to comply with the law and its process. Your failure to comply with the Bar's rules and requirements not only shows disrespect for the Bar, but also indicates a disregard and disrespect for the rules and processes of the law in general.

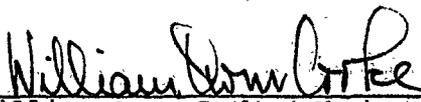
Your conduct was a direct violation of the Code of Professional Responsibility and was a reflection on you and the entire Bar of this State. Your conduct was unprofessional. It violated not only the letter, but also the spirit of the Code of Professional Responsibility of the North Carolina State Bar. 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.

Failure of attorneys to conduct themselves within the law and within the bounds of the Code of Professional Responsibility is the most serious complaint against our profession, and was your error here. You placed a privilege that you hold as a lawyer to serve the public in serious jeopardy.

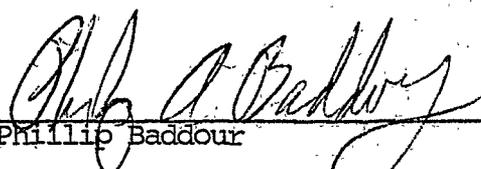
The North Carolina State Bar is confident that this Public Censure will be heeded by you, that it will be remembered by you, and that it will be beneficial to you. We are confident that you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession. 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 has been ordered that a certified copy of this Public Censure be entered upon the judgment docket of the Superior Court of Wake County and also upon the minutes of the Supreme Court of North Carolina.

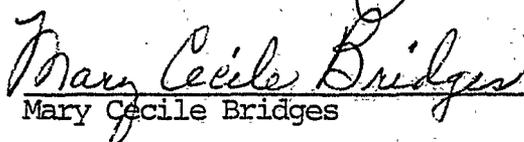
This the 6 day of FEBRUARY, 1981.



William Owen Cooke, Chairman
Disciplinary Hearing Committee



Phillip Baddour



Mary Cecile Bridges