

4572

NORTH CAROLINA

WAKE COUNTY

JUN 27 AM 11:00
CLERK, SEC.
STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
87 DHC 3

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
WILLIAM O. WARNER,)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on June 26, 1987 by a hearing committee composed of James E. Ferguson, II, Chairman, Karen Boyle, and Harry Sherwood; with A. Root Edmonson representing the North Carolina State Bar and the defendant not appearing; and based upon the admissions of the defendant from his failure to file an Answer or other pleading in this matter and the exhibits admitted into evidence, the hearing committee makes 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, William O. Warner, was admitted to the North Carolina State Bar on April 16, 1951 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, Code of Professional Responsibility, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, 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 Rocky Mount, Edgecombe County, North Carolina.

4. Defendant was retained by Donald Lee Mosely, Jr. for representation on criminal charges arising out of an incident which occurred on May 10, 1984.

5. Donald Lee Mosely, Jr. (hereinafter Mosely) was charged with assault with a firearm on a law enforcement officer after

allegedly pointing a rifle at a highway patrolman when the patrolman attempted to arrest Mosely for speeding, reckless driving, and failing to stop for a blue light and siren.

6. Mosely paid defendant the requested fee of \$1,500 for his representation.

7. Mosely was tried in Edgecombe County Superior Court on December 3 and 4, 1984 on the assault charge and the traffic offenses. The trial ended in a mistrial.

8. Mosely was again tried in Edgecombe County Superior Court on all charges on June 24 and 25, 1985 and was found guilty by a jury of each charge. Sentencing was postponed until July 3, 1985.

9. On July 3, 1985, after Mosely was given an active prison sentence on the felony assault charge, defendant gave notice of appeal to the North Carolina Court of Appeals on Mosely's behalf.

10. Because of Mosely's financial status at the time of his conviction, Judge Charles B. Winberry entered an order appointing defendant to perfect Mosely's appeal on July 3, 1985. Defendant was given 60 days to serve the proposed record on appeal upon the assistant district attorney in Tarboro.

11. On August 12, 1985 a notice was filed by the court reporter that the transcript of the Mosely trial had been prepared and mailed on August 9, 1985.

12. Defendant failed to file his proposed record on appeal within the time allowed by Judge Winberry.

13. Defendant represented to Mosely's father and sister on numerous occasions that he had filed what he needed to file for the appeal with the district attorney in Tarboro.

14. When Mosely's father or sister would follow-up, defendant would tell them that everything was proceeding as needed to bring the matter to a conclusion.

15. Defendant made these representations knowing that he had not taken the necessary steps to perfect Mosely's appeal.

16. On November 25, 1985 defendant filed a motion in the North Carolina Court of Appeals for an extension of time to file the record on appeal.

17. Defendant was given an extension until December 2, 1985 to file the proposed record with the clerk of superior court and serve a copy upon the district attorney.

18. Defendant filed his record on appeal on December 2, 1985 with the Clerk of Superior Court of Edgecombe County. He delivered a copy to the district attorney. The record consisted of four (4) typewritten pages in addition to the trial transcript.

19. Defendant failed to transmit a copy of the record on appeal to the North Carolina Court of Appeals or take any further action to perfect Mosely's appeal.

20. After receiving a Letter of Notice from the Chairman of the Grievance Committee of the North Carolina State Bar on June 24, 1986, defendant filed a motion to extend time to file appeal with the North Carolina Court of Appeals on June 25, 1986. Defendant dated his motion June 23, 1986.

21. By order dated June 26, 1986, the motion filed on June 25, 1986 was dismissed without prejudice to Mosely to petition the court for a writ of certiorari.

22. Defendant failed to notify Mosely that his appeal was dismissed so that Mosely could pursue having a petition for writ of certiorari filed on his behalf.

23. Defendant did not file any writ of certiorari on Mosely's behalf.

24. After Mosely's allegations were filed with the North Carolina State Bar's Grievance Committee, the Chairman of the Grievance Committee issued a Letter of Notice to defendant dated June 19, 1986 pursuant to §12(3) of Article IX of the Rules and Regulations of the North Carolina State Bar by certified mail, return receipt requested.

25. Defendant received the Letter of Notice on June 24, 1986.

26. Defendant failed to make any response to the Letter of Notice.

27. A follow-up letter was sent to defendant dated July 21, 1986.

28. Defendant failed to respond to the follow-up letter.

29. On October 1, 1986, the Chairman of the Grievance Committee issued a subpoena for defendant's appearance before the Grievance Committee at its meeting on October 22, 1986.

30. A copy of the subpoena was served upon defendant by certified mail, return receipt requested on October 6, 1986.

31. Defendant failed to appear as directed by the subpoena. Defendant directed no communication to the North Carolina State Bar and produced no documents.

BASED UPON the foregoing FINDINGS OF FACT, the hearing committee makes the following CONCLUSIONS OF LAW:

(1) The conduct of the defendant constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) in that:

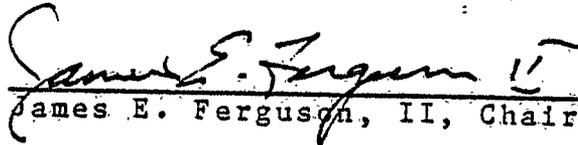
- (a) By failing to take the necessary steps to perfect Mosely's appeal, defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(B)(3) [for the period prior to October 7, 1985, defendant neglected a legal matter entrusted to him in violation of DR6-101(A)(3)]; intentionally failed to seek the lawful objectives of his client through reasonably available means permitted by law in violation of Rule 7.1(A)(1) [prior to October 7, 1985 defendant's conduct violated DR7-101(A)(1)]; prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(A)(3) [prior to October 7, 1985 defendant's conduct violated DR7-101(A)(3)].
- (b) By telling Mosely's father and sister that Mosely's appeal was proceeding as necessary to bring it to a conclusion while knowing that he had failed to perfect Mosely's appeal, defendant knowingly made a false statement of law or fact in violation of Rule 7.2(A)(4) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(C).
- (c) By failing to inform Mosely of the North Carolina Court of Appeals decision to dismiss Mosely's appeal without prejudice to Mosely to petition for a writ of certiorari, defendant failed to keep the client reasonably informed about the status of a matter in violation of Rule 6(B)(1) and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 6(B)(2).
- (d) By failing to take any action to pursue a writ of certiorari on Mosely's behalf or take any action to ensure that Mosely or someone

on his behalf filed such a writ, defendant intentionally failed to seek the lawful objectives of his client through reasonably available means permitted by law in violation of Rule 7.1(A)(1) and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(A)(3).

(2) The conduct of defendant constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(3) in that:

- (a) By failing to respond to the Letter of Notice issued by the Chairman of the Grievance Committee, or the follow-up letter, defendant failed to answer a formal inquiry issued by or in the name of the North Carolina State Bar in a disciplinary matter.
- (b) By failing to appear before the Grievance Committee as directed by the October 1, 1986 subpoena, defendant failed to answer a formal inquiry issued by or in the name of the North Carolina State Bar in a disciplinary matter.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this the 26th day of June, 1987.


James E. Ferguson, II, Chairman