

NORTH CAROLINA  
WAKE COUNTY

FILED  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
87 DHC 4  
JAMES, SEC.  
STATE BAR

THE NORTH CAROLINA STATE BAR,	)	
Plaintiff	)	
	)	FINDINGS OF FACT
vs.	)	AND
	)	CONCLUSIONS OF LAW
TIMOTHY E. OATES, Attorney	)	
Defendant	)	

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of John G. Shaw, Chairman, Maureen D. Murray and R. Powell Majors on Friday, September 18, 1987. The Plaintiff was represented by L. Thomas Lunsford, II and the Defendant was present and represented by R. David Wicker, Jr. Based upon the stipulations of the parties and the evidence at hearing, the Committee finds the following facts by clear, cogent and convincing evidence:

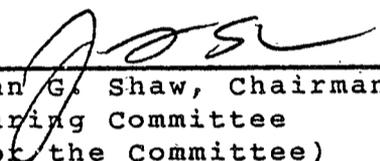
1. The plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The Defendant, Timothy E. Oates, was admitted to the North Carolina State Bar on August 26, 1977, 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, 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 Durham, Durham County, North Carolina.

4. On or about July 9, 1983, Robert J. Stauffenberg (Stauffenberg) was injured when a van in which he was riding as a passenger collided with a bus operated by the Young Men's Christian Association of Durham, Inc. (YMCA). Sometime thereafter, Stauffenberg employed the Defendant to represent him in asserting a claim against the YMCA. The Defendant subsequently filed suit against the YMCA on behalf of Stauffenberg and represented Stauffenberg at trial in December, 1985. At the trial the jury returned a verdict favorable to Stauffenberg in the amount of \$7,125.
5. Following the trial, the YMCA's insurer employed Walter E. Brock, Jr. (Brock), a member of the Wake County Bar, to represent its interest in attempting to negotiate a settlement of the Stauffenberg claim pending appeal.
6. In late February, 1986, Brock and the Defendant agreed to a settlement. On behalf of the insurer, Brock agreed to pay the Defendant's client the total amount of \$7,125, inclusive of all costs, interest and attorney's fees. In return for that sum, the Defendant agreed on behalf of his client to have his client execute a general release and to cancel the judgment of record.
7. Brock recited the settlement agreement in a letter to the Defendant dated March 3, 1986, by means of which he transmitted to the Defendant the U. S. Fire Insurance Company's draft in the amount of \$7,125.00 and a general release. In that letter Brock directed the Defendant to hold the draft in trust until the release had been executed and the judgment marked paid and satisfied. He also requested that the Defendant return to him the executed release along with some indication that the judgment had been marked fully paid and satisfied.
8. Shortly after receiving Brock's letter of March 3, 1986, the Defendant caused the enclosed draft to be endorsed and negotiated without causing the judgment to be cancelled. He acted without the knowledge or consent of Brock. The Defendant did have his client execute the release on or about March 5, 1986, however, he did not make that known to Brock at the time.
9. Despite repeated requests from Brock by telephone and by letter, the Defendant did not provide him with the executed release or secure the cancellation of the judgment until July, 1987.

Based upon the foregoing Findings of Fact, the Committee makes the following Conclusions of Law;

The Defendant, by facilitating the negotiation of a draft which had been entrusted to him by opposing counsel with instructions that it not be negotiated but upon the fulfillment of certain conditions precedent, which conditions were not fully satisfied prior to negotiation, engaged in conduct involving deceit and misrepresentation in violation of Rule 1.2(C) of the North Carolina Rules of Professional Conduct.

This the 28 day of October, 1987.

  
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John G. Shaw, Chairman  
Hearing Committee  
(For the Committee)

NORTH CAROLINA

WAKE COUNTY

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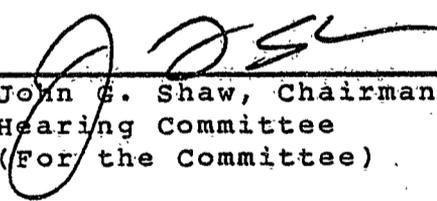
THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
vs. )  
TIMOTHY E. OATES, Attorney )  
Defendant )

ORDER OF DISCIPLINE

This cause was heard by a duly appointed Hearing Committee of the Disciplinary Hearing Commission consisting of John G. Shaw, Chairman, Maureen D. Murray, and R. Powell Majors on Friday, September 18, 1987. Based upon the Findings of Fact and Conclusions of Law entered in this cause, the evidence presented relative to the appropriate disciplinary sanction and oral arguments of counsel, the Hearing Committee enters this Order of Discipline;

- (1) The Defendant shall be publicly censured for his misconduct.
- (2) The Defendant shall pay the costs of this proceeding.

This the 28 day of October, 1987.

  
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John G. Shaw, Chairman  
Hearing Committee  
(For the Committee)

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILED  
1987-4 AT 9-11  
BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
JAMES, SEC. 87 DHC 4  
N.C. STATE BAR

IN THE MATTER OF

TIMOTHY E. OATES,  
ATTORNEY AT LAW

PUBLIC CENSURE

This Public Censure is delivered to you pursuant to Section 23 of Article IX of the Rules and Regulations of the North Carolina State Bar as ordered by a Hearing Committee of the Disciplinary Hearing Commission following a hearing in the above-captioned proceeding on September 18, 1987, at which the Hearing Committee found that you had violated Rule 1.2(C) of the Rules of Professional Conduct of the North Carolina State Bar.

On or about July 9, 1983, Robert J. Stauffenberg (Stauffenberg) was injured when a van in which he was riding as a passenger collided with a bus operated by the Young Men's Christian Association of Durham, Inc. (YMCA). Sometime thereafter, Stauffenberg employed you to represent him in asserting a claim against the YMCA. You subsequently filed suit against the YMCA on behalf of Stauffenberg and represented Stauffenberg at trial in December, 1985. At the trial the jury returned a verdict favorable to Stauffenberg in the amount of \$7,125.

Following the trial, the YMCA's insurer employed Walter E. Brock, Jr. (Brock), a member of the Wake County Bar, to represent its interest in attempting to negotiate a settlement of the Stauffenberg claim pending appeal.

In late February, 1986, you and Brock agreed to a settlement. On behalf on the insurer, Brock agreed to pay your client the total amount of \$7,125, inclusive of all costs, interest and attorney's fees. In return for that sum, you agreed on behalf of your client to have your client execute a general release and to cancel the judgment of record.

Brock recited the settlement agreement in a letter to you dated March 3, 1986, by means of which he transmitted to you the U. S. Fire Insurance Company's draft in the amount of \$7,125.00 and a general release. In that letter Brock directed you to hold the draft in trust until the release had been executed and the judgment marked paid and satisfied. He also requested that you return to him the executed release along with some indication that the judgment had been marked fully paid and satisfied.

Shortly after receiving Brock's letter of March 3, 1986, you caused the enclosed draft to be endorsed and negotiated without causing the judgment to be cancelled. You acted without the knowledge or consent of Brock. You did

have your client execute the release on or about March 5, 1986, however, you did not make that known to Brock at the time.

Despite repeated requests from Brock by telephone and by letter, you did not provide him with the executed release or secure the cancellation of the judgment until July, 1987.

By facilitating the negotiation of a draft which had been entrusted to you by opposing counsel with instructions that it not be negotiated but upon the fulfillment of certain conditions precedent, which conditions were not fully satisfied prior to negotiation, you engaged in deceitful and misrepresentative conduct in violation of Rule 1.2(C) of the North Carolina Rules of Professional Conduct. Your actions violated not only the letter but the spirit of the Rules of Professional Conduct.

Honesty is the cornerstone of professionalism. Integrity must characterize the dealings of attorneys as among themselves as well as with clients.

The Hearing Committee was particularly troubled by your failure to communicate with Mr. Brock in the wake of his many attempts to ascertain the status of the settlement. Your failure to frankly and forthrightly respond to his inquiries compounded the culpability associated with your initial breach of trust.

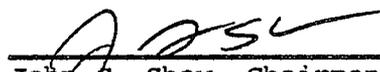
It is no excuse that in failing to satisfy the conditions precedent imposed upon the entrustment of the draft, you believed you were following the instructions of your client. While a lawyer owes his client the highest measure of loyalty and is obliged to zealously protect his rights, a lawyer is never justified in the compromise of his own professional honor. A lawyer owes his client only those services which can be lawfully rendered.

The fact that a public censure is not the most serious discipline provided for under N.C. Gen. Stat. §84-28 and the Rules of the North Carolina State Bar should not be taken by you to indicate that the Disciplinary Hearing Commission in any way feels that your conduct in this matter was excusable or was considered by the members of the Hearing Committee to be less than a very serious and substantial violation of the Rules of Professional Conduct.

The North Carolina State Bar is confident that this public censure will be heeded by you and you will never again allow yourself to depart from strict adherence to the highest standards of the legal professional.

Pursuant to Section 23 of Article IX of the Rules and Regulations of the North Carolina State Bar, it is ordered that a certified copy of this Public Censure be entered upon the judgment docket of the Superior Court of Durham County and also upon the minutes of the Supreme Court of North Carolina. This Public Censure shall also be maintained as a permanent record in the judgment book of the North Carolina State Bar.

This the 29 day of October, 1987.

  
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John G. Shaw, Chairman  
Hearing Committee  
(For the Committee)