

7066

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
87 DHC 13

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
ROBERT G. COWEN, Attorney,)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by a duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of John B. McMillan, Chairman, Robert C. Bryan and Emily W. Turner on Friday, December 11, 1987. The North Carolina State Bar was represented by L. Thomas Lunsford, II and the Defendant proceeded pro se. Based upon the evidence at hearing and the pleadings, 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, Robert G. Cowen, was admitted to the North Carolina State Bar on September 7, 1976 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. In the summer of 1978, Mr. William E. Cole received information concerning a parcel of real property in Jackson County, North Carolina which was apparently unclaimed and unoccupied by the heirs of its deceased former owner, Edith Campbell. Edith Campbell's executor and testamentary trustee, Ira B. Wells, encouraged

Mr. Cole to occupy the property and to attempt to obtain title by adverse possession. Mr. Cole was informed by Mr. Wells that he would deed the property to him in his official capacity as executor of the Campbell estate if Mr. Cole would agree to pay the taxes on the property.

4. Shortly thereafter, Mr. Cole visited the Jackson County Courthouse for the purpose of obtaining tax information and a legal description of the property so that a deed might be drafted which would purport to convey the property from the estate to Mr. Cole.
5. While at the courthouse Mr. Cole was observed by the Defendant, who was present on unrelated business. There ensued a conversation between the Defendant and Mr. Cole and his son, Richard Cole, relating to the real property in question. It was unclear from the evidence who initiated the conversation and the Committee makes no finding in that regard. Based upon that conversation and a further meeting between the Defendant and the Coles later that afternoon, the Defendant came to believe that he had been employed to render continuing legal assistance to Mr. Cole relative to his attempt to acquire the subject property by adverse possession in return for which he would be paid a fee of 25% of the value of the property, contingent upon its acquisition by adverse possession.
6. Subsequently, the Defendant performed various legal services for Mr. Cole including counseling him regarding the elements of adverse possession and the advisability of selling timber on the property, recording the deed to the property, procuring a survey and making appropriate responses to possible encroachments of surveyors and neighbors.
7. In December, 1986, the Defendant, having become aware that Mr. Cole had successfully prosecuted an action to quiet title in his name with the assistance of another attorney and had sold a portion of the property for a considerable amount of money, telephoned Mr. Cole and demanded payment of \$125,000 as his contingent fee. At that time Mr. Cole did not admit owing the Defendant anything and referred the matter to his lawyer, Clifton S. Fuller, Jr., of Lilburn, Georgia. Mr. Fuller then called the Defendant seeking information concerning the Defendant's claim so that he might advise his client, Mr. Cole.

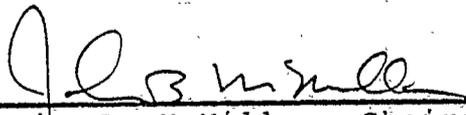
8. On or about January 22, 1987, the Defendant sent Mr. Cole and his wife a letter bearing that date concerning his fee demand.
9. On or about February 9, 1987, Mr. Fuller responded by letter to the Defendant's letter of January 22, 1987, on behalf of the Coles informing the Defendant of his status as the Coles' attorney in regard to the matter.
10. On or about March 17, 1987, the Defendant responded by letter to Mr. Fuller's letter of February 9, 1987, in which he set forth the basis of his claim, described his representation and demanded the sum of \$150,000.
11. On or about April 9, 1987, the Defendant wrote a letter directly to Mr. and Mrs. Cole inquiring as to their intentions regarding his fee. This letter was written and sent without the knowledge and consent of the Coles' attorney, Mr. Fuller, at a time when the Defendant knew the Coles were represented by counsel in regard to his claim.

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

- (a) By writing the Coles concerning his fee after he had become aware that they had employed a lawyer regarding his claim, the Defendant communicated about the subject of representation with adverse parties he knew to be represented without the consent of the parties' attorney in violation of Rule 7.4 of the North Carolina Rules of Professional Conduct; and
- (b) All other violations of the Rules of Professional Conduct and the Code of Professional Responsibility alleged by the Plaintiff in its complaint are dismissed for want of proof.

Pursuant to Section 14(20) of the Rules of Discipline and Disbarment, the Hearing Committee has authorized the Chairman to sign these Findings of Fact and Conclusions of Law on behalf of all members.

This the 22nd day of January, 1988.



John B. McMillan, Chairman
(For the Committee)

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
87 DHC 13

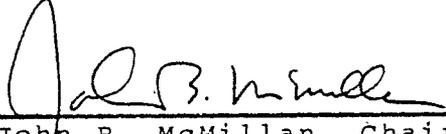
THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.) ORDER OF DISCIPLINE
ROBERT G. COWEN, Attorney,)
Defendant)

This cause was heard by a duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of John B. McMillan, Chairman; Robert C. Bryan and Emily W. Turner on Friday, December 11, 1987. Based upon the Findings of Fact and Conclusions of Law entered in this cause and the evidence presented relative to the appropriate disciplinary sanction, the Hearing Committee enters this ORDER OF DISCIPLINE.

1. The Defendant shall receive a Private Reprimand for his misconduct.
2. The Defendant shall pay the costs of this proceeding.

Pursuant to Section 14(20) of the Rules of Discipline and Disbarment, the Hearing Committee has authorized the Chairman to sign this order on behalf of all members.

This the 22nd day of January, 1988.



John B. McMillan, Chairman
(For the Committee)