

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 31

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

GARY A. GOERS, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on April 20, 1990 by a hearing committee of the Disciplinary Hearing Commission composed of John B. McMillan, Chairman, James E. Ferguson, II and Emily W. Turner; with A. Root Edmonson representing the North Carolina State Bar and Gary A. Goers not appearing; and based upon the admissions of Goers deemed from the default entered by the Secretary on April 2, 1990 due to Goers' failure to file an answer or other pleading in this matter, the hearing committee finds the following:

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, Gary A. Goers, was admitted to the North Carolina State Bar on September 27, 1985, 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 part of the pertinent period 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 Greenville, Pitt County, North Carolina. As set out below, Defendant later abandoned his law practice and left North Carolina.

As to the allegations contained in the First Claim for Relief in the Complaint, the hearing committee makes the following Findings of Fact:

4. In 1987, Goers undertook to represent Frank Brady (hereafter, Brady), in connection with securing debts owed to Brady by third parties. Brady was in the construction business and provided his own financing to customers by accepting deeds of trust on property improved by Brady.

5. Pursuant to his representation of Brady, Goers agreed to draft the deeds of trust, perform a title search and obtain title insurance as to the following customers:

- a. William Hyman
- b. Helen Dickens
- c. Mabel Mayo
- d. Joe Dixon, Jr.
- e. Ruby Keech

6. During 1987 and 1988, Goers neglected to draft deeds of trust, to perform title searches and to obtain title insurance for Brady for any of the debts of individuals referred to in paragraph 5, despite his assurances that he would do so.

7. Goers failed to respond to Brady's letters and telephone calls requesting information regarding these projects.

Based upon the Findings of Fact set out above that relate to the First Claim for Relief in the Complaint, the hearing committee makes the following Conclusions of Law:

Goers' actions, as set forth in paragraphs 4-7 above, constitute grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b) (2) in that Goers violated the Rules of Professional Conduct as follows:

- a) By failing to respond to Brady's requests for information, Goers failed to keep his client reasonably informed about the status of a matter and failed to promptly comply with reasonable requests for information 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).
- b) By neglecting to obtain title insurance, perform title searches and draft necessary documents on Brady's behalf, Goers neglected legal matters entrusted to him in violation of Rule 6(B) (3) and failed to carry out a contract of employment, in violation of Rule 7.1(A) (2).

As to the allegations contained in the Second Claim for Relief in the Complaint, the hearing committee makes the following Findings of Fact:

8. In 1988, Goers abandoned his law practice. Goers failed to notify clients that he was withdrawing from practice and failed to return file materials to his clients.

Based upon the Findings of Fact set out above that relates to the Second Claim for Relief in the Complaint, the hearing committee makes the following Conclusions of Law:

Goers' actions, as set out above in paragraph 8 above, constitute grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b) (2) in that Goers violated the Rules of Professional Conduct as follows:

- a) By failing to notify clients that he was withdrawing from private practice and failing to return their file materials to them, Goers withdrew from employment

- b) By failing to respond to Williams' requests for information, Goers failed to keep his client reasonably informed about the status of a matter and failed to promptly comply with reasonable requests for information 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).
- c) By failing to return Williams' file materials to him, Goers withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client and delivering to the client all papers and property to which the clients was entitled in violation of Rule 2.8(A)(2) and prejudiced or damaged his client in violation of Rule 7.1(A)(3).

As to the allegations contained in the Fifth Claim for Relief in the Complaint, the hearing committee makes the following Findings of Fact:

- 16. On or about August 23, 1988, the North Carolina State Bar sent to Goers a Letter of Notice regarding Goers' dealings with Mr. Brady and Mr. Williams. The letter was sent to Goers' address of record on file with the North Carolina State Bar and Goers signed the receipt for the letter on or about August 31, 1988.
- 17. Goers failed to file any response to the Letter of Notice.
- 18. An additional letter was sent to Goers on October 14, 1988 reminding Goers of his failure to respond to the Letter of Notice.
- 19. At some time after August 31, 1988, Goers moved to Louisville, Kentucky. The State Bar received notice of Goers' Louisville, Kentucky address between November 3 and November 30, 1988.
- 20. Goers' license to practice law was suspended by the North Carolina State Bar on November 30, 1988 for nonpayment of dues.
- 21. On February 6, 1989, a deputy bar counsel sent a letter to Goers at his Louisville, Kentucky address, requesting him to respond to the Letter of Notice.
- 22. The deputy bar counsel sent an additional copy of the Letter of Notice to Goers at his Louisville, Kentucky address on February 22, 1989 after Goers requested it by telephone.
- 23. Goers failed to respond to the Letter of Notice.

Based upon the Findings of Fact set out above that relate to the Fifth Claim for Relief in the Complaint, the hearing committee makes the following Conclusions of Law:

Goers' actions, as set forth in paragraphs 16-23 above, constitute grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b)(3) in that Goers failed to answer formal inquiries issued by or in the name of the

without taking reasonable steps to avoid foreseeable prejudice to the rights of his clients, including giving due notice to his clients and delivering to the clients all papers and property to which the clients were entitled in violation of Rule 2.8(A) (2).

As to the allegations contained in the Third Claim for Relief in the Complaint, the hearing committee makes the following Findings of Fact:

9. In 1987, Goers borrowed \$15,000 from a client, Howard R. Williams, of Greenville.
10. Williams expected Goers to exercise his professional judgment to protect Williams' interests regarding the \$15,000 loan.
11. Goers failed to fully disclose to Williams the risks involved in lending the \$15,000 to Goers and failed to advise Williams to seek independent legal counsel prior to making the loan.
12. Goers failed to repay the \$15,000 loan.

Based upon the Findings of Fact set out above that relate to the Third Claim for Relief in the Complaint, the hearing committee makes the following Conclusions of Law:

Goers' actions, as set forth in paragraphs 9-12 above, constitute grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b) (2) in that Goers violated the Rules of Professional Conduct as follows:

- a) By engaging in a business transaction with a client in which his interests were adverse to the client's and pursuant to which the client expected Goers to protect his interests, without first obtaining the client's informed consent, Goers violated Rule 5.4(A).

As to the allegations contained in the Fourth Claim for Relief in the Complaint, the hearing committee makes the following Findings of Fact:

13. In 1987, Williams retained Goers to collect a \$3,000 debt owed to Williams by a third party.
14. Goers neglected to attempt to collect the debt and refused to respond to Williams' requests for information respecting this matter.
15. Goers failed and refused to return Williams' file materials to him, including evidence of the debt owed to Williams.

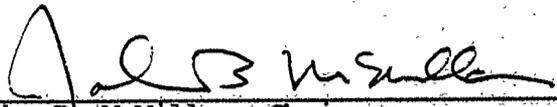
Based upon the Findings of Fact set out above that relate to the Fourth Claim for Relief in the Complaint, the hearing committee makes the following Conclusions of Law:

Goers' actions, as set forth in paragraphs 13-15 above, constitute grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b) (2) in that Goers violated the Rules of Professional Conduct as follows:

- a) By taking no action to collect the debt owed Williams, Goers neglected a legal matter entrusted to him in violation of Rule 6(B) (3) and failed to carry out a contract of employment in violation of Rule 7.1(A) (2).

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 20th day of April, 1990.



John B. McMillan, Chairman

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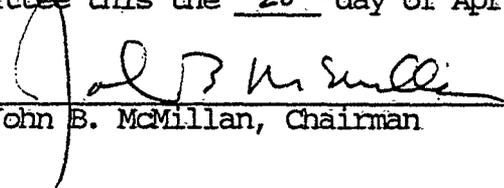
ORDER OF DISCIPLINE

BASED UPON the Findings of Fact and Conclusions of Law of even date herewith, and further based upon Goers' failure to make any response to the North Carolina State Bar or this hearing committee which would show the hearing committee what caused him to abandon his responsibilities to his law practice and to his family; and not knowing what conditions are necessary to be required before reinstating Goers' license after a suspension of his license, the hearing committee, therefore, enters the following ORDER:

1. Gary A. Goers is hereby DISBARRED from the practice of law in North Carolina.
2. Goers shall surrender his license certificate and membership card to the Secretary of the North Carolina State Bar.
3. Goers should return all client files in his possession to his former clients.
4. Goers should comply with Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar.
5. Goers is taxed with the costs in this matter as assessed by the Secretary.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this the 20th day of April, 1990.

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John B. McMillan, Chairman

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