

NORTH CAROLINA
WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

WILLIAM R. SHELL, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on to be heard and was heard on May 25, 1990 before a hearing committee of the Disciplinary Hearing Commission composed of L. P. Hornthal, Jr., chairman; J. Richard Futrell, and W. Harold Mitchell. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant was represented by James L. Nelson. Based upon the stipulations of the parties and the evidence admitted at the hearing, the committee finds the following facts by clear, cogent, and convincing evidence:

FINDINGS OF FACT

1. 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. Defendant, William R. Shell, was admitted to the North Carolina State Bar in 1973 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 the Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in the town of Wilmington, N.C.
4. Defendant undertook to represent Edgar C. Ruof in early 1988 regarding Ruof's efforts to obtain parole. Defendant understood Ruof was to become eligible for parole in June, 1989.
5. In late January 1988, Ruof's father paid \$750.00 to Defendant on Ruof's behalf. Shell received the check for the retainer on January 25, 1988.

6. From approximately January of 1988 to June of 1988, Defendant wrote Ruof two letters. The letter of January 12, 1988 from the Defendant to Ruof requested an attorney's fee of \$750 and indicated that Defendant would begin work when he received the fee. In the January 12, 1988 letter to Ruof, Defendant also indicated that he always made it a policy to meet with his client in person. Defendant's March 8, 1988 letter to Ruof indicated that Defendant had received his attorney's fee and had begun work on Ruof's case. Defendant indicated that he planned to visit Ruof within the near future.
7. Defendant never visited Ruof in prison to discuss Ruof's legal matter.
8. Ruof asked the Defendant to return his file and the unearned attorney's fee. The Defendant failed to return Ruof's file to him and Defendant refunded the attorney's fee after Ruof filed a grievance against the Defendant.
9. During the course of the parties' attorney-client relationship, Defendant took no effective action in seeking parole for Ruof as he did not talk to personnel of the North Carolina Parole Commission or anyone else about Ruof getting parole or getting into the Mutual Agreement Parole Program (MAPP).
10. The North Carolina State Bar sent Defendant a letter of notice regarding a grievance filed against Defendant by Ruof on or about January 24, 1989. Defendant received the letter of notice on January 27, 1989.
11. Defendant did not request or receive an extension of time to respond to the January 24, 1989 letter of notice.
12. The N.C. State Bar sent follow-up letters to Defendant on March 28 and April 27, 1989, reminding him of his obligation to respond to the letter of notice.
13. The North Carolina State Bar issued a subpoena duces tecum to Defendant on May 16, 1989 requiring him to testify in the grievance investigation regarding his representation of Ruof. Defendant received the subpoena and communicated his receipt of the subpoena by letter dated May 22, 1989 to Mr. B. E. James. On May 15, 1989, Defendant sent a response to the January 24, 1989 letter of notice, which response was received by the North Carolina State Bar on May 16, 1989. Defendant was excused from the subpoena on May 30, 1989 since he had filed a response.
14. Bar counsel requested additional information from Defendant regarding the grievance in letters dated

June 6, 1989 and July 5, 1989.

15. Defendant failed to respond to bar counsel's letters and failed to obtain an extension of time in which to respond to the inquiries of bar counsel.
16. On July 19, 1989, the State Bar issued a subpoena duces tecum to Defendant, which was personally served on Defendant on July 24, 1989. The subpoena commanded Defendant to produce all file materials pertaining to Ruof's case to the State Bar no later than August 14, 1989.
17. Defendant responded to the subpoena by letter of August 10, 1989, enclosing all documents in his file.
18. Defendant failed to respond in a timely manner to a grievance filed against him in 1984.

Based upon the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. By failing to take effective action on Ruof's behalf, Defendant neglected a legal matter entrusted to him in violation of Rule 6(B)(3).
2. By failing to communicate adequately with Ruof, Defendant violated Rule 6(B)(1).
3. By failing to return Ruof's file as he requested, the Defendant has violated Rule 2.8(A)(2).
4. By failing to refund promptly the unearned attorney's fee paid in advance by Ruof's father, the Defendant has violated Rule 2.8(A)(3).
5. By failing to provide a full and fair response to the January 24, 1989 Letter of Notice no later than fifteen days after receiving the Letter of Notice, Defendant failed to answer a formal inquiry of the North Carolina State Bar in a disciplinary matter in violation of N. C. Gen. Stat. Section 84-28(b)(3) and Rule 1.1(B).
6. By failing to respond to Bar Counsel's letters of June 6 and July 5, 1989 until forced to do so by subpoena, Defendant failed to answer a formal inquiry of the North Carolina State Bar in a disciplinary matter in violation of N. C. Gen. Stat. Section 84-28(b)(3) and Rule 1.1(B).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 28 day of July, 1990.

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L. P. Hornthal, Jr., Chairman

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vs.

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ORDER OF DISCIPLINE

This cause was heard on May 25, 1990 by a duly appointed hearing committee of the Disciplinary Hearing Commission consisting of L. P. Hornthal, Jr., chairman; J. Richard Futrell, and W. Harold Mitchell. In addition to the Findings of Fact and Conclusions of Law made following the evidentiary hearing the Hearing Committee makes the additional finding of fact in mitigation as follows:

ADDITIONAL FINDINGS OF FACT

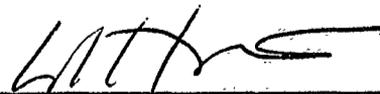
The Defendant has been a licensed attorney in the Wilmington, North Carolina area since 1973 and, according to the testimony received in this case, has an excellent reputation in the Wilmington community for professional ability, skill in the handling of clients' legal affairs and honesty.

Based upon the Findings of Fact and Conclusions of Law entered in this case and the additional Finding of Fact set forth above, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant shall be publicly censured for his misconduct.
2. The Defendant shall return the file of Edgar C. Ruof to him within fifteen days of the entry of this Order of Discipline.
3. The Defendant shall pay the costs of this proceeding.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 28 day of July, 1990.


L. P. Hornthal, Jr., Chairman

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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 May 25, 1990. At that hearing, the hearing committee found that you have violated various provisions of the Rules of Professional Conduct of the North Carolina State Bar.

In January of 1988, you agreed to represent Edgar C. Ruof in Ruof's efforts to obtain parole. Ruof's father paid you \$750 to represent Ruof. You received the \$750 check on January 25, 1988. You understood that Ruof became eligible for parole in June of 1989.

Ruof indicated that he wanted you to assist him in getting parole by getting into the Mutual Agreement Parole Program (MAPP). During the course of your representation of Ruof from January 1988 to June 1988, you did not talk with anyone with the North Carolina Parole Commission about the MAPP program, neither did you speak with anyone about Ruof's possibility of being paroled.

In your first letter dated January 12, 1988 to Ruof, you informed him that you could help him. You also told him that "although much of our work can be done by mail, I always make it a policy to meet with my client in person."

Approximately two months passed and Ruof heard nothing from you. In your letter of March 8, 1988, you informed Ruof that you had begun work on his case and that you needed to get together with him soon. You told Ruof that you would come and visit him within the next few days.

During the entire time of your representation, you never visited Ruof to discuss his case while he was in prison. Furthermore, during the course of your representation of Ruof, you communicated with him twice by your January 12 and March 8, 1988 letters.

Ruof discharged you as his attorney sometime in June of 1988.

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He asked that you return his file and refund any part of the fee that you had not earned. You did not return the file promptly to Ruof and you did not refund any of the unearned attorney's fee until after Ruof filed a grievance against you with the North Carolina State Bar.

You indicated that during the time you represented Ruof, you had a heavy case load and were involved in other more serious legal matters. The hearing committee believed that your case load and other priorities were no excuse for your failure to give proper attention to Ruof's case. In fact, the comment to Rule 6 of the Rules of Professional Conduct provides that "a lawyer's work load should be controlled so that each matter can be handled adequately." When a lawyer cannot give proper attention to a client's legal matter, the lawyer should inform the client so that he may decide to retain other counsel.

Your failure to take effective action on Ruof's behalf and your failure to adequately communicate with him, were violations of Rule 6(B)(1) and (3) of the Rules of Professional Conduct. The hearing committee noted that your neglect in handling Ruof's case could have resulted in potential injury to your client.

You also failed to respond promptly to the North Carolina State Bar's Grievance Committee in its investigation of the grievance filed by Ruof against you. You received a Letter of Notice from the State Bar relative to Ruof's grievance on January 27, 1989. You did not respond to the Letter of Notice within fifteen days of receiving it. Neither did you request an extension of time to respond to the Letter of Notice. Even after the North Carolina State Bar sent follow-up letters to you on March 28 and April 27, 1989, reminding you of your obligation to respond to the Letter of Notice, you failed to answer the grievance. The North Carolina State Bar issued a subpoena duces tecum to you on May 16, 1989 requiring you to testify in the grievance investigation regarding your representation of Ruof. You received the subpoena and communicated your receipt of it by letter dated May 22, 1989 to Mr. B. E. James. On May 15, 1989, you sent a response to the Letter of Notice and it was received by the State Bar on May 16, 1989. Therefore, you were excused from the subpoena on May 30, 1989 since you had filed a response.

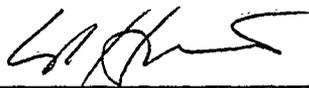
The bar counsel assigned to the grievance filed against you sought additional information regarding the grievance by letters dated June 6 and July 5, 1989. When you failed to respond promptly to bar counsel's letters, the North Carolina State Bar issued a subpoena duces tecum to you on July 19, 1989. You finally responded to bar counsel's additional questions by a letter dated August 10, 1989 and you enclosed all documents in your file regarding Ruof's case.

Your failure to respond to the North Carolina State Bar's formal inquiries in a prompt and expeditious manner violates N. C. Gen. Stat. Section 84-28(b)(3) and Rule 1.1(B) of the Rules of Professional Conduct. The dilatory manner in which you responded to the North Carolina State Bar is very serious and inexcusable. As a licensed attorney in North Carolina, you have an obligation to respond to the North Carolina State Bar's investigation of grievances filed against you. The North Carolina State Bar can carry out its function of discipline and regulation of members of

the Bar when attorneys cooperate by giving full, fair, and prompt responses to the State Bar's inquiries. If you should ever receive another inquiry from the North Carolina State Bar, you should respond to it with dispatch.

The hearing committee, after hearing all the evidence and character witnesses on your behalf, imposes this Public Censure. The fact that the hearing committee has chosen to impose the sanction of Public Censure 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 not serious. The hearing committee is satisfied that you will never again allow yourself to depart from the strict adherence to the highest standards of the legal profession.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 28 day of July, 1990.



L. P. Hornthal, Jr., Chairman

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