

NORTH CAROLINA
WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 23

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

SAMUEL S. POPKIN, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on to be heard and was heard on May 16, 1991 before a hearing committee of the Disciplinary Hearing Commission composed of Samuel J. Crow, chairman; Donald L. Osborne and Stephen T. Smith. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant was represented by Joseph B. Cheshire, V. Based upon the stipulations of the parties and the evidence presented at the hearing, the Committee finds the following facts by clear, cogent, and convincing evidence:

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, Samuel S. Popkin, was admitted to the North Carolina State Bar on February 3, 1978, 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 and maintained a law office in Jacksonville, North Carolina.
4. In October of 1988, Edwenna K. Peyton retained the Defendant to represent her regarding injuries she sustained when she fell on the sidewalk at Vernon Park Mall on August 15, 1986.
5. Defendant filed a lawsuit captioned Edwenna K. Peyton vs. Vernon Park Mall Merchants Assoc. Inc.

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(89 CVS 1211) in Lenoir County on November 28, 1989. Defendant took a dismissal in that action on December 15, 1989.

6. At the time Defendant filed the lawsuit captioned Edwenna K. Peyton vs. Vernon Park Mall Merchants Association, Inc. (89 CVS 1211) on November 28, 1989, the statute of limitations had run on or about August 15, 1989.
7. Defendant did not inform Edwenna Peyton that the statute of limitations had expired at the time he filed the action on November 28, 1989.
8. On December 18, 1989 the Defendant filed a lawsuit captioned Edwenna K. Peyton v. Lawrence M. Goodman d/b/a Vernon Investment Associates (89 CVS 1277) in Lenoir County, although the statute of limitations had run.
9. Mrs. Peyton telephoned the Defendant numerous times during the months following her first contact with Defendant's office in an attempt to get information about her case. Defendant returned very few of Mrs. Peyton's telephone calls, although Defendant's staff assured her that her case was progressing.
10. Mrs. Peyton received a notice from the Defendant indicating that her case was scheduled for court on March 16, 1990. Peyton went to court on March 16 and waited for the Defendant. The Defendant did not appear in person in court.
11. During the period of his representation, the Defendant only saw Mrs. Peyton on one occasion on March 16, 1990.
12. Mrs. Peyton discharged the Defendant from employment and requested her file. Pursuant to Defendant's office policy, his receptionist asked Mrs. Peyton to sign a mutual release after which Mrs. Peyton's file was released to her. However, Defendant subsequently offered to settle Mrs. Peyton's malpractice claim against him in a letter dated April 18, 1990. Defendant settled her claim against him for \$15,000.
13. Defendant neither obtained a settlement in Mrs. Peyton's accident case nor filed a lawsuit prior to the expiration of the statute of limitations.
14. Defendant failed to discuss adequately with Mrs. Peyton the lawsuit filed by Defendant. The Defendant further failed to discuss with Mrs. Peyton the importance of taking prompt action in her case in the few remaining months before the statute of limitations expired.
15. Defendant did not know that the statute of limitations had run in Mrs. Peyton's case until

February or March 1990, although he signed the complaints filed in her action on November 28 and December 18, 1989.

16. The Defendant did not discuss with Mrs. Peyton in detail the significance and meaning of the running of the statute of limitations once he knew the statute had run.

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

CONCLUSIONS OF LAW

1. By failing to meet with Mrs. Peyton at any time during the period of representation, other than on March 16, 1990; by failing to discuss Mrs. Peyton's slip and fall accident case, including such procedural matters as when the case should be filed; by failing to discuss the significance and meaning of the expiration of the statute of limitations in Mrs. Peyton's case once it was known to the Defendant; by failing to make personal contact with Mrs. Peyton to apprise her of her case; and by not meeting her in court on March 16, 1990 after notifying her to be present, Defendant has failed to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of Rule 6(B)(1) and he has failed to act with reasonable diligence and promptness in representing the client in violation of Rule 6(B)(3).
2. By making an agreement prospectively limiting his liability to Mrs. Peyton for malpractice, while she was not independently represented in making the agreement, Defendant has violated Rule 5.8.
3. By attempting to settle the malpractice claim with Mrs. Peyton without first advising her in writing that the independent representation may be appropriate, Defendant violated Rule 5.8.
4. By requiring Mrs. Peyton to sign the release before turning over the file to her, Defendant failed to deliver to the client all papers and property to which the client was entitled in violation of Rule 2.8(A)(2).
5. By failing to settle or file a lawsuit in Mrs. Peyton's action prior to the expiration of the statute of limitations, Defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(B)(3); failed to seek the lawful objectives of his client through reasonably available means permitted by law and the Rules of Professional

Conduct, in violation of Rule 7.1(A)(1); failed to carry out a contract of employment entered into with a client for professional services, in violation of Rule 7.1(A)(2); prejudiced or damaged his client during the course of the professional relationship, in violation of Rule 7.1(A)(3); and engaged in conduct prejudicial to the administration of justice, in violation of Rule 1.2(D).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 12th day of June, 1991.

Samuel J. Crow
Samuel J. Crow, Chairman
Hearing Committee

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NORTH CAROLINA
WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 23

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

SAMUEL S. POPKIN, ATTORNEY
Defendant

ORDER OF DISCIPLINE

This cause was heard on May 16, 1991 by a duly appointed hearing committee of the Disciplinary Hearing Commission consisting of Samuel J. Crow, Chairman; Donald L. Osborne, and Stephen T. Smith. In addition to the Findings of Fact and Conclusions of Law made following the evidentiary hearing, the hearing committee makes the following Findings of Fact relative to the appropriate disciplinary sanction:

ADDITIONAL FINDINGS OF FACT

1. The following aggravating factors are present in this case:
 - a) Defendant has received three Letters of Admonition from the North Carolina State Bar Grievance Committee in the last year.
 - b) Defendant has engaged in multiple offenses respecting violations of the Rules of Professional Conduct; and
 - c) Defendant failed to respond promptly to the North Carolina State Bar Grievance Committee regarding the grievance filed by Mrs. Peyton.
2. Defendant's settlement of the malpractice claim with Mrs. Peyton is a mitigating factor in this disciplinary case.

Based upon the Findings of Fact, Conclusions of Law, and the additional Findings of Fact which have been set forth, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. Defendant is suspended from the practice of law for one year, such suspension is stayed for three years upon the following conditions:

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- a) Defendant must comply with the North Carolina Rules of Professional Conduct during the period of the stayed suspension;
- b) The Defendant must submit to his attorney, Joseph B. Cheshire V, all steps taken relative to ensuring that the operation of his office and his handling of cases complies with the Rules of Professional Conduct. Such report shall be due to Mr. Cheshire six months from the date of entry of this order and a second report is due one year thereafter. Defendant's attorney shall submit the reports to counsel for the State Bar; and
- c) Defendant shall comply with the State Bar's continuing legal education requirements during the three years of the stayed suspension.

2. 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 12th day of June, 1991.



Samuel J. Crow, Chairman
Hearing Committee

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