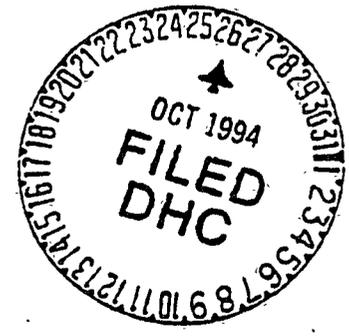


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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR



93 DHC 32

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.) ORDER OF DISCIPLINE
JAMES C. COLEMAN, ATTORNEY)
Defendant.)

Based upon the Findings of Fact and Conclusions of Law dated October 21, 1994, and further based upon the evidence and arguments presented by the parties concerning the appropriate discipline, the hearing committee appointed to hear this matter finds the following:

AGGRAVATING FACTOR

- 1. Substantial experience in the practice of law.

MITIGATING FACTORS

- 1. Absence of prior disciplinary record.
- 2. Absence of a dishonest or selfish motive.
- 3. Personal or emotional problems.
- 4. Full and free disclosure to the hearing committee or cooperative attitude toward proceedings.

5. Physical or mental disability or impairment.

Based upon the evidence and arguments presented and the above aggravating and mitigating factors, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. The defendant, James C. Coleman, is suspended from the practice of law in North Carolina for one year.

2. The above suspension shall be stayed for five years upon the following conditions:

- a. Defendant shall not represent anyone, either as counsel or co-counsel and whether for a fee or on a pro bono basis, in any adversarial proceeding involving a neutral fact finder during the stay period. By way of illustration but not limitation, defendant shall not represent anyone in an adversarial proceeding before a clerk of court, a state or federal magistrate or judge, an administrative law judge, before a state or federal agency (including social security claims, workers' compensation claims, tax cases, etc.), or an arbitrator.

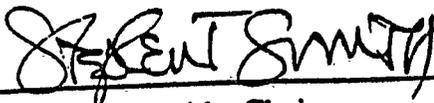
If defendant is currently representing anyone in a contested matter, he shall withdraw within 30 days of the date this order is served upon defendant.

Questions regarding whether contemplated action will constitute a violation of this condition shall be ruled on by the chair of the hearing committee. Both parties shall be allowed the opportunity to respond. Either party may appeal the chair's decision to the full hearing committee.

- b. Defendant shall not violate any laws or Rules of Professional Conduct during the stay period.

3. Defendant shall pay the costs of this proceeding.

Signed by the Chairman of the committee with the consent of the other committee members this 31 day of October, 1994.


Stephen T. Smith, Chairman.

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR



93 DHC 32

THE NORTH CAROLINA STATE BAR,)
Plaintiff) FINDINGS OF FACT
vs.) AND
JAMES C. COLEMAN, ATTORNEY) CONCLUSIONS OF LAW
Defendant.)

This matter came on to be heard on February 3, 1994, and September 20, 1994, by a duly appointed hearing committee comprised of Stephen T. Smith, Chairman; Robert B. Smith, Jr.; and A. James Early, III; and based upon the Stipulation on Prehearing Conference, the evidence presented at trial, and the arguments of counsel, the committee hereby enters the following:

FINDINGS OF FACT

1. 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, James C. Coleman, was admitted to the North Carolina State Bar on October 15, 1964, and was at all times relevant hereto 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 times relevant hereto, Coleman was actively engaged in the practice of law in the Town of Hendersonville, Henderson County, North Carolina.
4. Coleman represented the purchasers of a structurally damaged house in a lawsuit against, among others, the seller, for, among other things, unfair or deceptive trade practices. The action was styled Johnson v. Beverly-Hanks & Associates, Inc., et al. and was filed with the Henderson County Clerk of Superior Court. After a pretrial hearing, the trial court entered summary judgment for the seller on the unfair or deceptive trade practices issue. Thereafter, Coleman, on behalf of the purchasers, appealed to the North Carolina Court of Appeals.
5. On February 20, 1990, the Court of Appeals rendered a decision in the Johnson case, 97 N.C. App. 335 (1990). The relevant portion of the opinion is as follows:

Plaintiffs next alleged a claim for relief [against the seller] based upon G.S. sec. 75-1.1. This statute regulates unfair and deceptive trade practices. To be accountable to any party for violating G.S. sec. 75-1.1, a defendant must be engaged in commerce. Homeowners are "private parties engaged in the sale of [a] residence [and are] not involved in trade or commerce and cannot be held liable under the statute." [Citation omitted].

The undisputed facts establish that [the seller] was merely a homeowner who listed her house for sale. Based upon this, [the seller] cannot be liable for any acts which might generally be considered unfair or deceptive trade practices.

6. Judge Greene filed a dissenting opinion concerning some of the issues decided by the majority but did not dissent as to the unfair or deceptive trade practices claim.
7. On or about March 7, 1990, Coleman, on behalf of the purchasers, filed a Notice of Appeal and Petition for Discretionary Review with the North Carolina Supreme Court. Coleman correctly included the unfair or deceptive trade practices issue in the Petition for Discretionary Review instead of the Notice of Appeal since there was no dissent on the unfair or deceptive trade practices issue and therefore, there was no right of appeal.
8. On April 5, 1990, the North Carolina Supreme Court denied Coleman's Petition for Discretionary Review. As of April 5, 1990, the unfair or deceptive trade practices issue was no longer before the Supreme Court.
9. On June 13, 1990, Coleman filed a complaint on behalf of James Jones styled Jones v. Sumner, et al., 90 CVS 800 (Henderson County). The complaint alleged, among other things that the sellers, Paul and Cheryl Luck, made false representations to Mr. Jones concerning the waterproofing in the basement and the garage.
10. In the fourth claim for relief, Coleman alleged that the false representations by Mr. and Mrs. Luck "were in or affecting commerce and constitute unfair or deceptive trade practices, which are proscribed by Chapter 75 of the North Carolina General Statutes."
11. At a hearing held on November 26, 1990, on Mr. and Mrs. Luck's motion to dismiss Jones' unfair or deceptive trade practices claim, Coleman made the following misrepresentations to the court concerning the status of the Johnson case:

Your Honor, the only thing I have to say on [the

issue of whether or not a private vendor is engaged in commerce and therefore, subject to an unfair or deceptive trade practice claim] is that very question is now pending before the North Carolina Supreme Court. . . . The question now pending before the North Carolina Supreme Court, and we are awaiting their decision on that, is: is [whether] listing the property with a member of the Firm of a multiple listing service, [places] the property beyond control and dominion of the owner and in fact, places it in the flow of commerce. . . . There's a case pending down in Raleigh right now to decide this very point and I would suggest that before your Honor rules either way on that, we might consider waiting and see what the Supreme Court says, how they answer that question and then I think this issue would be resolved by that.

12. In response to opposing counsel's argument that the unfair or deceptive trade issue went to the Supreme Court on a Petition for Certiorari from a unanimous opinion of the Court of Appeals, Coleman replied:

Your Honor, opposing Counsel stated that the matter went to the Supreme Court on a Petition for Certiorari from a unanimous opinion of the Court of Appeals. That is simply not true. There was a dissenting opinion that was rather lengthy in the Court of Appeals and it was an appeal of right to the Supreme Court and the dissenting opinion of the Court of Appeals took the position that I am now taking and we simply need to wait and see which way the Supreme Court goes. They've been wrestling with it down there for a right good while.

13. At the time Coleman made these statements to the Court, he knew.

or should have known, that the issue of whether or not a private homeowner was engaged in commerce was not before the Supreme Court.

14. In 1989, Lynn Murray hired the firm of Toms and Bazzle, P.A. (hereinafter "the Firm") to represent her in a domestic action against Kenneth R. Murray. Eugene M. Carr, III, an associate of the Firm, prepared and filed a complaint seeking child custody, child support, alimony and other relief. Soon after the action was filed, a temporary consent order was entered into between the Murrays, who ultimately obtained a divorce in 1990.
15. Even though certain domestic property claims were pending, Ms. Murray terminated her relationship with the Firm and on May 5, 1990, retained the services of Coleman. On January 18, 1991, Coleman, on behalf of Ms. Murray, filed a civil action in Henderson County Superior Court against Ervin W. Bazzle, Eugene M. Carr, III, James H. Toms, and their respective firms, styled Murray v. Bazzle, et al., 91 CVS 72 (Henderson County) (hereafter "the state case"). The complaint alleged that the defendants wrongfully withheld client funds, committed professional malpractice, and committed various felonies.
16. On or about October 24, 1991, Coleman filed an amended complaint against the same defendants in federal court pursuant to 28 U.S.C. Sec. 1383, styled Murray v. Bazzle, et al., No. 91-CV-186 (D.N.C. filed October 24, 1991)(hereafter "the federal case"). In the federal case, Coleman, on behalf of Ms. Murray, repeated, in claims two through six, the same claims made in the state case. In addition, Coleman, on behalf of Ms. Murray, alleged in paragraph 11 of the first claim for relief that the defendants had conspired with "two different resident Superior Court Judges and another Superior Court Judge[;] [t]he Supreme Court of North Carolina, the Grievance Committee of the North Carolina State Bar, the Judicial Standards Commission of the State of North Carolina, and the District Attorney's office for the

Twenty-ninth [sic] Judicial District. . . ." to deny her the relief she sought in the state case.

17. In paragraph 14, subparagraphs (a) through (p) of the amended complaint, Coleman, on behalf of his client, made 16 allegations of conspiracy between the defendants and the above described state officials and agencies.
18. On December 9, 1991, defendants filed an answer denying any wrongdoing, several motions to dismiss, and a motion pursuant to Rule 11 of the Rules of Federal Procedure for sanctions.
19. In order to state a cause of action under 42 U.S.C. Sec. 1983, Coleman was required to allege specific facts tending to show (1) deprivation of a constitutional right or privilege (2) by a person acting under color of state law. Private defendants, such as Ms. Murray's former attorneys, are not liable under 42 U.S.C. Sec. 1983 unless the plaintiff alleges specific facts tending to show a conspiracy between the private defendants and state officials.
20. On December 29, 1992, the Honorable Richard L. Voorhees, Chief Judge, United States District Court, Western District of North Carolina, entered a Memorandum of Opinion and Order which held that the allegations contained in the amended complaint were insufficient to support the existence of such a conspiracy. Consequently, Judge Voorhees granted the defendants' motion to dismiss the first claim for relief (conspiracy claim) for failure to state a cause of action and also granted the defendants' motion to dismiss the remaining claims for lack of jurisdiction.
21. On February 8, 1993, a hearing was held on the defendants' motion for sanctions. At the hearing, Coleman conceded that he had violated Rule 11 of the Rules of Federal Procedure which provides in pertinent part:

The signature of an attorney . . . constitutes a

certificate by the signer that the signer has read the pleading [and] that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. . . .

22. By Memorandum of Opinion and Order filed September 29, 1993, Judge Voorhees ruled that Coleman had violated Rule 11 of the Rules of Federal Procedure by filing the amended complaint which was not well grounded in law or fact. Judge Voorhees reprimanded and sanctioned Coleman, and awarded Ms. Murray's former attorneys judgment in the amount of \$1,058.29 representing the reasonable costs incurred in the defense of the federal case.

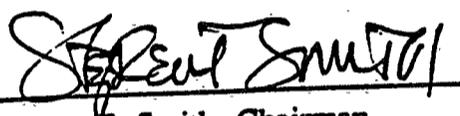
Based upon the foregoing Findings of Fact, the committee hereby enters the following:

CONCLUSIONS OF LAW

- (a) By misrepresenting the status of the Johnson appeal at the motions hearing in the Jones case, Coleman engaged in conduct involving misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct and knowingly made a false statement of law or fact in violation of Rule 7.2(A)(4) of the Rules of Professional Conduct.
- (b) By filing the amended complaint in Murray v. Bazzle without a sufficient factual or legal basis to support a claim under 28 U.S.C. Sec. 1983, Coleman filed suit when he knew or when it was obvious that such action would be frivolous or would serve merely to harass or maliciously injure

another in violation of Rule 7.2(A)(1) of the Rules of Professional Conduct and knowingly advanced a claim that was unwarranted under existing law in violation of Rule 7.2(A)(2) of the Rules of Professional Conduct.

Signed by the Chairman of the committee with the consent of the other committee members this 21 day of October, 1994.


Stephen T. Smith, Chairman

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