

6. The hearing on the matter was continued from May 19, 1993 until June 10, 1993.

7. Oliver, who had not been at court on May 19, 1993, attempted to contact Shell to learn the status of her case on May 19, May 20, May 21, and May 24, 1993.

8. Each time Oliver called Shell on the dates listed in paragraph 7, she left a message for him to call her. Shell did not return Oliver's calls prior to June 1, 1993.

9. On or about June 1, 1993, Shell called Oliver and told her that her case had been continued. Shell told Oliver that he would notify her of the new date.

10. Shell did not notify Oliver that a new court date of June 10, 1993 had been set until after July 19, 1993.

11. On June 10, 1993, neither Shell nor Oliver appeared in court regarding Oliver's traffic case.

12. Oliver was called and failed on June 10, 1993.

13. On or about July 19, 1993, Oliver received a letter dated July 13, 1993 from the North Carolina Department of Motor Vehicles advising her that her North Carolina driving privilege would be suspended as of September 11, 1993 for failing to appear in court on citation number 4305347.

14. On July 19, 1995, Oliver called Shell on the telephone but she was unable to speak with Shell on that date. She then faxed a message to Shell on July 19, 1995.

15. On July 20, 1995, Oliver spoke with Shell on the telephone. In the telephone conversation of July 20, 1995, Shell told Oliver the following:

a. That the case was continued from May 19, 1995 until June 10, 1995 because the officer did not appear in court;

b. That he had requested a continuance of Oliver's case from June 10, 1993 because he was to be in federal court on that date, that his request for a continuance had been lost but that he had had this problem corrected and had obtained a new court date; and

c. That the letter dated July 13, 1993 from the North Carolina Department of Motor Vehicles (DMV) had been stricken from Oliver's record and that she now had a new court date.

16. On or about July 20, 1993, Oliver contacted the Department of Motor Vehicles to verify what Shell had told her only to find that the DMV letter dated July 13, 1993 was in Oliver's file with no indication that Shell had taken any action regarding the letter.

17. In a letter dated August 3, 1993, Oliver notified the New Hanover Clerk of Court of the problems she had experienced with

Shell.

18. Sometime after August 3, 1993, Oliver discharged Shell as her attorney and requested a refund of the legal fee. Shell issued Oliver a refund check for \$235.00.

Based upon the foregoing Findings of fact, the committee enters the following:

CONCLUSIONS OF LAW

1. By failing to respond to Oliver's telephone calls and by failing to notify Oliver of the status of her case until after she had received a letter from the North Carolina Department of Motor Vehicles that her driving privilege was being suspended, Shell failed to keep Oliver reasonably informed about the status of her case in violation of Rule 6(b)(1) of the Rules of Professional Conduct.

2. By failing to make reasonable inquiries with the New Hanover County Clerk of Court or the District Attorney's Office about a new date for a hearing on Oliver's case after Shell allegedly requested a continuance from the June 10, 1993 date, Shell failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(b)(3) of the Rules of Professional Conduct.

3. By falsely representing to Oliver on July 20, 1993 that a new court date had been set and that he had solved Oliver's problem with the North Carolina Department of Motor Vehicles so that her driving privilege would not be revoked, Shell engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d) of the Rules of Professional Conduct.

In addition to the foregoing Findings of Fact and Conclusions of Law and the consent of all parties, the hearing committee approves and enters the following:

FINDINGS IN MITIGATION

1. personal or emotional problems.
2. timely good faith efforts to make restitution.
3. physical or mental disability or impairment.

FINDINGS IN AGGRAVATION

1. prior disciplinary offenses.
2. substantial experience in the practice of law.
3. issuance of a letter of warning to the defendant within the three years immediately preceding the filing of the complaint for failing to respond to the inquiries of the State Bar.

4. multiple violations.

Based upon the Findings of Fact and Conclusions of Law, as well as the findings in mitigation and aggravation, the hearing committee approves and enters the following:

ORDER OF DISCIPLINE

1. William R. Shell shall be suspended from the practice of law in North Carolina for three years. The suspension of Shell's law license is stayed for a period of three years from the effective date of the entry of the Order herein, based upon the following conditions:

(a) On or before April 1, 1996, Shell shall provide to the Secretary of the State Bar a written report from a board certified psychiatrist detailing the psychiatrist's diagnosis of Shell's mental and emotional problems. The report should include the psychiatrist's prognosis, recommendations for Shell's treatment, and the psychiatrist's opinion as to whether, with this prognosis, Shell is likely to be able to perform the obligations necessary to engage in the practice of law.

(b) Shell shall arrange with the board certified psychiatrist to supply subsequent written reports from the psychiatrist to the Secretary of the State Bar on a quarterly basis beginning July 1, 1996 and continuing every quarter thereafter for three years that Shell is mentally and emotionally capable of practicing law in North Carolina and that Shell is substantially complying with all treatment recommended by the psychiatrist. Shell shall be responsible for obtaining this certification from the psychiatrist and supplying this information to the Secretary of the State Bar in a timely manner. The certifications are due on the following dates: July 1, 1996, October 1, 1996, January 2, 1997, April 1, 1997, July 1, 1997, October 1, 1997, January 2, 1998, April 1, 1998, July 1, 1998, October 1, 1998, January 2, 1999, and April 1, 1999.

(c) Within 30 days of the date of this order, Shell must pay \$850.00 which amount is delinquent and due the Lawyers' Management Assistance Program (LMAP) for his previous participation in the program. In addition, within 30 days of the date of this order, Shell must contact Ruby Edwards, the administrative assistant for LMAP, and arrange to participate in the program for another year. Shell must satisfactorily participate and complete an additional year of LMAP, including the payment of all fees related to the program by April 15, 1997. Shell must make an advance payment of \$600 to the LMAP program by May 1, 1996.

(d) In addition to the mandatory Continuing Legal Education requirements, Shell must complete three (3) additional hours in ethics and six (6) additional hours in law office management by April 1, 1997 by a sponsor approved by the North Carolina State Bar.

(e) During the period of the stay, Shell shall not violate state or federal laws.

(f) During the period of the stay, Shell shall not violate the North Carolina Rules of Professional Conduct.

(g) Shell is taxed with the costs of this proceeding which must be paid by June 30, 1996.

(h) Shell must pay his 1995 State Bar dues and a \$75.00 late fee within thirty (30) days of this order.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the hearing committee, this the 15th day of February, 1996.

James R. Fox
James R. Fox, Chair
Disciplinary Hearing Committee

Seen and consented to:

William R. Shell
William R. Shell
Defendant, Pro Se

Harriet P. Tharrington
Harriet P. Tharrington
Attorney for Plaintiff