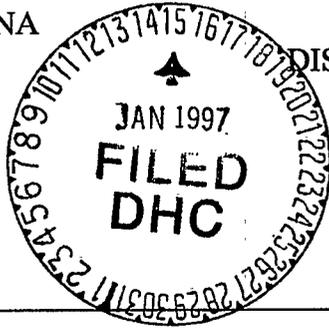


5829

NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
95 DHC 19  
96 DHC 2  
96 DHC 11

---

THE NORTH CAROLINA STATE BAR, )  
 )  
 Plaintiff )  
 )  
 v. ) CONSENT ORDER OF DISCIPLINE  
 )  
 WILLIAM R. SHELL, )  
 Attorney )  
 )  
 Defendant )

---

This matter was heard on the 19th day of December, 1996, before a hearing committee of the Disciplinary Hearing Commission composed of Robert B. Smith, chairman; Michael L. Bonfoey, and Anthony E. Foriest. The North Carolina State Bar was represented by Fern E. Gunn. The defendant, William R. Shell, was represented by Auley M. Crouch III.

Pursuant to an order entered on October 16, 1996 by Henry C. Babb, Jr., chairman of the Disciplinary Hearing Commission, DHC case file numbers 95 DHC 19 ( a motion to show cause), 96 DHC 2, and 96 DHC 11 concerning the defendant were consolidated for hearing. The defendant does not object to the consolidation of these matters for disposition.

Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Based upon the consent of the parties, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar, the plaintiff, 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 under Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. William R. Shell, the defendant, was admitted to the North Carolina State Bar in 1973, 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 all of the periods referred to herein, defendant was actively engaged in the practice of law in North Carolina and maintained a law office in Wilmington, North Carolina.

4. The defendant is competent to enter into this consent order of discipline, and he does so, upon the advice of his counsel.

5. The defendant failed to answer the State Bar's complaint in the matter of the North Carolina State Bar v. Shell, 96 DHC 2 and an entry of default was entered by the Secretary of the North Carolina State Bar.

6. A motion for order to appear and show cause was filed by the State Bar and an order to appear and show cause was entered by the chairman of the Disciplinary Hearing Commission in the matter of the North Carolina State Bar v. Shell, 95 DHC 19.

7. A complaint was filed in the matter of the North Carolina State Bar v. Shell, 96 DHC 11 and the defendant answered the complaint.

8. The defendant has waived his right to a formal hearing in the aforementioned matters.

9. In 1991, Ted Bigford hired the defendant to handle several collection matters against Leader Construction Company.

10. During the three years that defendant had Mr. Bigford's cases, the defendant misled Mr. Bigford about the status of his cases.

11. The Defendant neglected to collect any money from Leader Construction Company for Mr. Bigford.

12. On December 28, 1994, the defendant sent Mr. Bigford a statement of services. Defendant indicated that a total of \$435.00 was due: \$365.00 for attorney's fee; \$60.00 for the filing fee and \$10.00 for service of process fee. A part (\$265.00) of the \$365.00 was the attorney's fee due to the defendant to pay for services rendered in another matter against Daniels Construction Company. In early January 1995, Mr. Bigford paid a total of \$435.00 to the defendant.

13. The Defendant did not have to spend the \$60.00 for filing fee and the \$10.00 for service of process fee since he never filed an action in court on Mr. Bigford's behalf.

14. The defendant has not refunded to Mr. Bigford the money he obtained from him to pay various court costs, fees and the balance of the attorney's fee (\$100.00) which was not earned.

15. By letter dated March 9, 1995, Mr. Bigford asked the defendant to turn over his client files to another attorney.

16. The defendant did not release Mr. Bigford's files until several months later.

17. On June 8, 1995, Mr. Bigford filed a grievance against the defendant with the Fifth Judicial District Bar Grievance Committee.

18. The defendant was sent two letters dated June 13, 1995 and June 14, 1995 from the Fifth Judicial District Bar Grievance Committee wherein he was asked to respond to Mr. Bigford's grievance.

19. The defendant did not respond to the Fifth Judicial District Bar Grievance Committee regarding Mr. Bigford's grievance.

20. On September 20, 1995, the defendant was served with a letter of notice and substance of Mr. Bigford's grievance by certified mail, return receipt requested by the North Carolina State Bar Grievance Committee. The defendant was required to respond to the letter of notice within 15 days of receiving the grievance.

21. The defendant did not respond to the grievance within the 15-day deadline. Defendant did not request an extension to respond to the grievance.

22. On November 3, 1995, the State Bar issued a subpoena to produce documents or objects to the defendant, requiring him to appear at the State Bar office on November 20, 1995. The defendant received the subpoena. He asked to be excused from the subpoena because of another obligation. The State Bar and the defendant agreed that he would appear on November 27, 1995 at the State Bar office.

23. The defendant appeared at the State Bar office on November 27, 1995 and spoke with a deputy counsel and investigator about Mr. Bigford's grievance. The defendant was asked to respond in writing to the grievance no later than December 4, 1995. On December 11, 1995, the defendant sent by facsimile his response dated December 5, 1995 to the State Bar.

24. On February 15, 1996, the Disciplinary Hearing Commission of the North Carolina State Bar entered a consent order of discipline, finding that the defendant violated the Rules of Professional Conduct.

25. The February 15, 1996 order of discipline directed that the defendant's license to practice law be suspended for three years. The suspension was stayed for three years on several conditions including that the defendant pay the \$850.00 which he owes

to the N.C. State Bar Lawyers Management Assistance Program (LMAP) and arrange by March 15, 1996 to participate in LMAP for another year.

26. The defendant failed to pay the \$850.00 fee which he owes to LMAP and has failed to contact LMAP to enroll in the program for another year.

27. The defendant failed to comply with the consent order of discipline entered on February 15, 1996.

28. In late 1994, Chen-Yu Sun hired the defendant to obtain an early termination of his probation. Mr. Sun's probation was scheduled to terminate in July 1996.

29. Mr. Sun paid the defendant \$1,500.00 as his attorney's fee.

30. The defendant did not file an action to seek early termination of Mr. Sun's probation.

31. The defendant did not earn the attorney's fee paid to him. The defendant did not refund the unearned fee to Mr. Sun.

32. In January 1996, Michael George retained the defendant to file a bankruptcy petition on behalf of Mr. George and his wife, Norma George.

33. Mr. George paid \$300.00, which represented a portion of the attorney's fee he agreed to pay the defendant, and \$175.00 for the filing fee. Defendant agrees to waive the balance of the fee owed him by Mr. George.

34. On several occasions Mr. George telephoned the defendant to determine the status of his case. Although the defendant did call Mr. and Mrs. George and met with them to obtain additional information necessary to the preparation of their petition, the defendant did not return Mr. George's telephone calls each time Mr. George left a message.

35. On March 2, 1996, the defendant told Mr. George that he (the defendant) had completed the Georges' bankruptcy petition and the petition had been mailed to the court for filing. Mr. George later learned that the defendant had not filed the bankruptcy petition on the date he claimed. In fact, defendant did not file Mr. and Mrs. George's bankruptcy petition until April 1, 1996.

36. The defendant was retained to assist John H. Sloan in negotiating a pay-off of a judgment that First Union National Bank had against him.

37. The defendant was paid a portion of his fee by James Webb, Mr. Sloan's son.

38. On May 31, 1996, Eliza Sloan, Mr. Sloan's wife, telephoned the defendant to inquire about the status of her husband's case.

39. The defendant advised Mrs. Sloan to bring her husband to his office on June 1, 1996 to discuss the case.

40. Mr. and Mrs. Sloan met with the defendant in his office on June 1, 1996 to discuss Mr. Sloan's case.

41. The defendant had researched the public records in New Hanover and Brunswick Counties to determine whether there were other judgments against Mr. Sloan. The defendant told the Sloans to pay him \$300.00 and that he would take care of Mr. Sloan's matter.

42. The Sloans gave the defendant a check in the amount of \$300.00 as his attorney's fee.

43. When the defendant accepted the Sloans' check for \$300.00, he knew he was unable to practice law since he had surrendered his law license to Superior Court Judge Ernest B. Fullwood and Judge Fullwood had transferred the defendant to inactive status effective as of May 28, 1996, the date of the consent order entered in that matter.

44. The defendant did not inform the Sloans of the status of his law license when he accepted the \$300.00 check.

45. Since 1989 the defendant has suffered from periods of severe depression which has been diagnosed and treated by a psychiatrist.

46. In 1991 the defendant married Dolly Thompson Shell.

47. Since shortly after his marriage to Dolly Thompson Shell, the defendant has lived in a virtual state of "living hell" and in a constant state of mental abuse, turmoil, torment, and financial and emotional pressure from Dolly Thompson Shell. When combined with the enormous work load required to meet the financial demands of the marriage, the stress of his marital problems resulted in the defendant again seeking psychiatric treatment in 1993 for severe, clinical depression.

48. Upon his doctor's advice, the defendant attempted to reduce his work load to alleviate his depression and took prescription drugs for his depression.

49. Despite continued strife in his marriage, the defendant and his wife attempted a reconciliation in May 1994. They were counseled by H. Mac Wallace of the North Carolina Baptist Hospital Counseling Center in Wilmington.

50. The defendant assisted his wife in attempting to handle her mother's estate in 1995; such efforts required defendant to be in Florida and away from his law practice. Mrs. Shell had gone to Florida in late December 1994, refused to return to Wilmington and urged the defendant to give up his law practice and make a life with her in Florida.

51. The defendant decided to close his law practice and enrolled with a personnel search firm in Florida. He even allowed his wife to move most of their household goods to Florida.

52. In July 1995, Mrs. Shell was tried in New Hanover County on charges of driving while impaired, assault on two police officers and resisting arrest.

53. Mrs. Shell was not satisfied with the result of her trial and plea bargain and publicly accused the defendant of "selling her out." She left Wilmington, returned to Florida and cut off all communication with the defendant.

54. The defendant has taken numerous prescription drugs for depression and sleep disorders. Following an automobile accident in 1995 he began taking prescription medications for pain.

55. As the pressures from his deteriorating marriage and declining mental and physical condition mounted, the defendant neglected all aspects of his life including his law practice.

56. In April 1996 the defendant and Dolly Thompson Shell were divorced.

57. In May 1996, the defendant realized he was unable to continue to practice law. After consultation with friends and colleagues, on May 28, 1996, he surrendered his law license to the Honorable Ernest B. Fullwood, Senior Resident Superior Court Judge for the Fifth Judicial District and was transferred to disability inactive status.

Based upon the consent of the parties and the foregoing Findings of Fact, the hearing committee enters the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant and the subject matter of this proceeding.

2. The defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b) as follows:

(a) By failing to take prompt action in collecting the debts that Mr. Bigford claimed against the Leader Corporation, 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); failed to carry out a contract of employment entered into with a client for professional services in violation of Rule 7.1(b); prejudiced or damaged his client during the course of the professional

relationship in violation of Rule 7.1(c); and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

(b) By misrepresenting the status of Mr. Bigford's case, defendant engaged in conduct involving misrepresentation in violation of Rule 1.2(c); engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

(c) By not refunding the money that defendant obtained from Mr. Bigford to pay litigation costs when no action was filed in court, defendant failed to pay promptly or deliver to the client funds to which the client is entitled in the possession of the lawyer in violation of Rule 10.2(e).

(d) By not promptly returning Mr. Bigford's file to him as he requested, defendant failed to deliver to the client all papers to which the client is entitled in violation of Rule 2.8(a)(2).

(e) By not responding to the Fifth Judicial District Bar Grievance Committee regarding the grievance filed by Mr. Bigford, defendant has knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(b).

(f) By not responding to the State Bar regarding the grievance filed by Mr. Bigford until he was subpoenaed to appear and testify about the matter, defendant has knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(b).

(g) By failing to file an action to get Mr. Sun's probation terminated before July 1996, the defendant failed to act with reasonable diligence and promptness in representing the 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); and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(a)(3).

(h) By not refunding the unearned attorney's fee paid by Mr. Sun, the defendant failed to refund promptly any part of a fee paid in advance that has not been earned in violation of Rule 2.8(3).

(i) By not promptly filing the Georges' bankruptcy petition, the defendant failed to act with reasonable diligence and promptness in representing the client in violation of Rule 6(b)(3); failed to seek the lawful objectives of his or her client through reasonably available means permitted by law and the Rules of Professional Conduct in violation of Rule 7.1(a)(1); and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(a)(3).

(j) By not returning Mr. George's telephone calls, the defendant failed to keep the client reasonably informed about the status of a matter and failed to comply promptly with reasonable requests for information in violation of Rule 6(b)(1).

(k) By telling Mr. George that he had filed the bankruptcy petition when he had not, the defendant engaged in conduct involving misrepresentation in violation of Rule 1.2(c).

(l) By failing to disclose to the Sloans that he could no longer practice law and thus could not represent Mr. Sloan in his legal matter, the defendant has engaged in conduct involving misrepresentation in violation of Rule 1.2(c).

(m) By accepting money from the Sloans as an attorney's fee when he knew he could not practice law pursuant to a court order, the defendant has engaged in conduct involving dishonesty or misrepresentation in violation of Rule 1.2(c).

(n) By failing to disclose to the Sloans that he had surrendered his law license and had been transferred to disability inactive status, the defendant engaged in conduct involving 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).

3. By failing to pay the \$850.00 which the defendant owed to the N.C. State Bar Lawyers Management Assistance Program and by failing to arrange to participate in LMAP for another year no later than March 15, 1996 as required by the February 15, 1996 consent order of discipline, the defendant failed to comply with the terms which were conditions precedent to the stay of the three-year suspension of his license to practice law.

Based upon the consent of the parties, the hearing committee also enters the following:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:

- (a) prior disciplinary offenses;
- (b) substantial experience in the practice of law;
- (c) multiple offenses; and

(d) issuance of a letter of warning to the defendant within the three years immediately preceding the filing of the complaint by the State Bar.

2. The defendant's misconduct is mitigated by the following factor:

(a) severe and prolonged depression, a destructive marriage and other serious personal or emotional problems.

Based upon the foregoing findings of fact and conclusions of law and the findings regarding discipline and based upon the consent of the parties, the hearing committee enters the following:

#### ORDER OF DISCIPLINE

1. The defendant is hereby suspended from the practice of law for four years, effective as of the date of this consent order of discipline.

2. The defendant has submitted his law license and membership card to the Honorable Ernest B. Fullwood, Senior Resident Superior Court Judge of the Fifth Judicial District. Defendant shall not seek to obtain either his law license or membership card from Judge Fullwood or any Superior Court Judge without first having petitioned the State Bar for reinstatement of his law license.

3. The defendant may seek reinstatement of his law license to practice law upon filing a written petition and demonstrating compliance with the following conditions:

a. The defendant shall receive treatment from a board certified psychiatrist during the period of suspension of his law license and that such treatment shall continue for as long as the psychiatrist dictates. The defendant's treatment is to begin no later than 30 days from the date of this consent order of discipline. At least 30 days before the defendant petitions for reinstatement of his law license, he shall submit to the Office of Counsel of the North Carolina State Bar a statement from his psychiatrist that he is mentally and emotionally able to resume the practice of law. The defendant shall execute a release that permits the Office of Counsel of the North Carolina State Bar to obtain his treatment records and receive other pertinent information from his psychiatrist relating to his treatment and prognosis.

b. The defendant shall pay \$170.00 as a refund of a retainer and court costs to Ted Bigford.

c. The defendant shall pay \$850.00 to Lawyers' Management Assistance Program for his prior participation in the program.

d. The defendant shall pay \$1,500.00 as a refund of a retainer to Chen-Yu Sun.

e. The defendant shall pay \$300.00 as a refund of a retainer to Mr. and Mrs. John H. Sloan;

f. The defendant shall violate no state or federal laws.

g. The defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar.

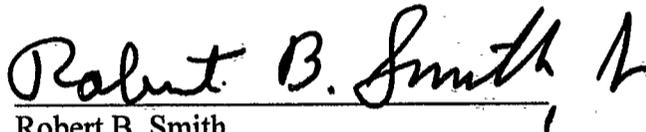
h. The defendant shall pay the costs of the proceeding in the North Carolina State Bar v. Shell, 95 DHC 19, as assessed by the Secretary of the North Carolina State Bar.

i. The defendant shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0124 of the N.C. State Bar's Discipline and Disability Rules.

j. comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0125(b) of the N. C. State Bar's Discipline and Disability Rules.

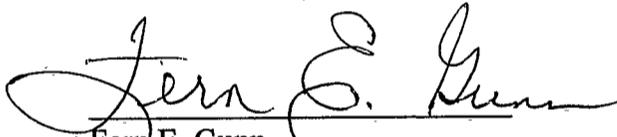
Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 19<sup>th</sup> day of Dec., 1996.

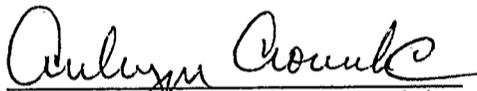


Robert B. Smith  
Chairman  
Hearing Committee

Seen and consented to:



Fern E. Gunn  
Attorney for the North Carolina State Bar



Auley M. Crouch III  
Attorney for the Defendant



William R. Shell  
The Defendant