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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
97 DHC 9

THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	
)	CONSENT ORDER OF DISCIPLINE
v.)	
)	
RUSSELL L. MCLEAN III, Attorney,)	
Defendant)	

This matter, came on before the undersigned hearing committee of the Disciplinary Hearing Commission composed of Robert B. Smith, chair, Joseph G. Maddrey, and A. James Early III, pursuant to Rule .0114(h) of the Discipline and Disability Rules of the North Carolina State Bar. The defendant, Russell L. McLean III, was represented by R. Daniel Boyce. The plaintiff, the North Carolina State Bar, was represented by Fern Gunn Simeon. Both parties have agreed to waive a formal hearing in this matter and they stipulate and agree to the following 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 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.
2. The defendant, Russell L. McLean III (hereafter McLean) was admitted to the North Carolina State Bar on September 8, 1976, and is, and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.
3. During all times relevant hereto McLean was actively engaged in the practice of law in North Carolina and maintained a law office in Waynesville, North Carolina.
4. McLean was properly served with process in this matter and he waived his right to a formal hearing.

5. McLean and Susie McLean were married in 1985.
6. McLean and Susie McLean (hereafter Susie McLean Jordan) were divorced on September 22, 1992 in Haywood County, North Carolina.
7. On June 29, 1993, Susie McLean Jordan's attorney filed a motion to show cause why McLean should not be held in contempt due to, among other things, his arrearage in child support.
8. On October 4, 1993, a contempt hearing was held in Buncombe County District Court. McLean testified at the hearing.
9. Richlyn D. Holt, McLean's attorney, asked McLean about a trip that he made to Bolivia, South America in August 1993.
10. McLean testified that he traveled to Bolivia to assist the Rotary Club in building an addition to a children's clinic.
11. McLean further testified at the contempt hearing that the Rotary Club paid for his trip to Bolivia.
12. On cross-examination, Susie McLean Jordan's attorney, Dennis J. Winner (hereafter Winner), asked McLean if he were "obliged" to pay back the Rotary Club. McLean replied: "I hope not". Upon further questioning by Winner, McLean testified that the Rotary Club indicated that it would pay for the trip.
13. The Rotary Club paid up front McLean's expenses of approximately \$1,600.00 for the Bolivia trip, and the Rotary Club had earlier donated that amount to the Andrian Rural Health Organization. The Rotary Club expected McLean to donate the \$1,600.00 to it and McLean was aware that the Rotary Club expected him to donate the money.
14. McLean's testimony about the Bolivia trip was based upon his understanding of the word "obliged" as used by Winner in his question. McLean believed that he was not "obliged" to pay back the Rotary Club in the sense that there was no legal binding note, written contract or guarantee of the obligation to repay the money to the Rotary Club.
15. McLean did not ask Winner to clarify his question about the financing of the Bolivia trip before McLean answered it.
16. McLean did not tell the Court or Winner that he interpreted the word "obliged" to mean a written contract or other binding obligation. McLean did not make it clear that his answer to Winner's question was limited to indicating whether McLean had signed a note or otherwise had a contractual obligation to repay the Rotary Club.

17. Neither Winner nor the judge asked follow-up questions to clarify McLean's understanding of his response regarding repayment of Rotary Club funds.

18. McLean's testimony respecting the Bolivia trip was potentially misleading in that a reasonable person could have concluded from it that the Bolivia trip was a gift to McLean from the Rotary Club instead of an advance or loan which the Rotary Club expected to be repaid by McLean.

19. McLean should have known that his testimony respecting the financing of the Bolivia trip was potentially misleading.

20. McLean did donate the \$1600.00 to the Rotary Club in 1994.

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

CONCLUSION 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. § 84-28(b)(2) as follows:

By giving potentially misleading testimony respecting the financing of the Bolivia trip, McLean engaged in conduct prejudicial to the administration of justice, in violation of Rule 1.2(d) of the Rules of Professional Conduct.

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

FACTOR IN MITIGATION

Absence of any prior disciplinary record

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:

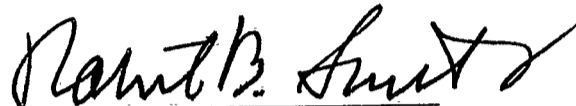
ORDER OF DISCIPLINE

1. McLean is hereby admonished.

2. McLean shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar.


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

This the 20th day of November, 1997.

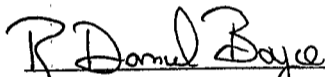


Robert B. Smith, Chair
Hearing Committee

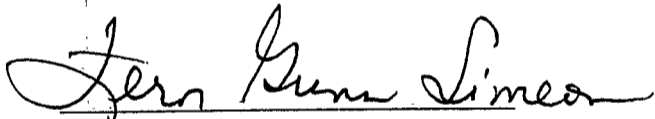
Consented to:



Russell L. McLean
Defendant



R. Daniel Boyce
Attorney for Defendant



Fern Gunn Simeon
Attorney for Plaintiff