

WAKE COUNTY

NORTH CAROLINA

6557

BEFORE THE DISCIPLINARY HEARING COMMISSION THE NORTH CAROLINA STATE BAR 97 DHC 23

THE NORTH CAROLINA STATE BAR,)
 Plaintiff)
 v.)
 LAURENCE D. COLBERT, ATTORNEY,)
 Defendant)

) CONSENT ORDER OF DISCIPLINE

This matter coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to Section .0114 of the Discipline and Disability Rules of the North Carolina State Bar (hereinafter "Bar Rules"), both parties have agreed to waive a formal hearing in this matter and stipulate and agree to the following findings of fact and conclusions of law and to the discipline imposed, the Hearing Committee enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar (hereafter "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 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, Laurence D. Colbert, (hereafter "Colbert"), was admitted to the North Carolina State Bar in 1975, 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, 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, Colbert was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Durham, Durham County, North Carolina.

4. On June 7, 1989, Colbert was appointed to represent Santiago Elliott (hereinafter "Elliott") on two separate cases both involving charges of first degree rape, first degree sex offense, and taking indecent liberties with a child.

5. A jury convicted Elliott in both cases on April 8, 1991, of first degree sexual offense and taking indecent liberties with a child.

6. Also on April 8, 1991, Colbert was appointed as Elliott's appellate counsel and gave notice of Elliott's appeal of his convictions.

7. Colbert never served a proposed record on appeal or otherwise perfected Elliott's appeal of his convictions, although he did perform a significant amount of work to perfect the appeal.

8. On May 22, 1996, Colbert was served by plaintiff with a Letter of Notice concerning the grievance filed by Elliott.

9. Colbert failed to respond in a timely manner to this letter of notice and several other lawful demands for information from the North Carolina State Bar.

10. The defendant waived his right to a formal hearing.

Based upon the foregoing Findings of Fact, the hearing committee makes 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 North Carolina General Statute Section 84-28(b)(2), in that:

(a) By failing to perfect Elliott's appeal, Colbert: (i) neglected to act with reasonable diligence and promptness in representing Elliott, in violation of Rule 6(b)(3); (ii) intentionally failed to carry out a contract of employment, in violation of Rule 7.1(a)(2); and (iii) intentionally prejudiced or damaged Elliott during the course of the professional relationship, in violation of Rule 7.1(a)(3);

(b) By knowingly failing to respond to a lawful demand for information from the North Carolina State Bar, Colbert violated Rule 1.1(b).

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. Colbert previously has been reprimanded by the North Carolina State Bar on August 10, 1993, for failing to perfect the appeal of felony convictions for another criminal defendant client;
 - b. a pattern of misconduct of failing to perfect appeals for criminal defendants whom he is appointed to represent;
 - c. multiple offenses; and
 - d. substantial experience in the practice of law.
2. The defendant's misconduct is mitigated by the following factors:
 - a. personal or emotional problems;
 - b. character and reputation; and
 - c. remorse and cooperation with client's new appellate counsel.
3. The aggravating factors do not outweigh the mitigating factors.

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, Laurence D. Colbert, is hereby suspended from the practice of law in the State of North Carolina for a period of six months from the date this Consent Order of Discipline is filed. The period of suspension is stayed for three years upon the following conditions:

- (a) The Defendant attend and complete a Law Management Practice Program approved by the State Bar. Colbert must schedule an initial appointment within 60 days of the filing of this Order of Discipline and must complete the program within the period of the stayed suspension. Defendant shall be responsible to pay all costs associated with attending and completing the program as a condition of the stayed suspension. Defendant shall send the State Bar quarterly progress reports from the program administrator no later than January 1, April 1, July 1, and October 1, for each year of the stayed suspension. Defendant also shall send the State Bar documentation

that the program has been satisfactorily completed no later than 60 days before the expiration of the stayed suspension.

(b) Defendant shall continue psychotherapy and comply with all recommendations for treatment and counseling throughout the course of the stayed suspension. Defendant shall be responsible for having his psychotherapist forward quarterly progress reports to the State Bar throughout the course of the stayed suspension. The reports must be sent to the State Bar no later than January 1, April 1, July 1, and October 1, for each year of the stayed suspension.

(c) Defendant must designate an active member of the North Carolina State Bar, practicing in Durham County, to monitor any appeals he agrees or is appointed to handle ("monitor"). The State Bar reserves the right to approve or reject any person submitted by the Defendant as a monitor. Throughout matter the course of the stayed suspension, Defendant shall notify the monitor within one business day of being appointed or agreeing to represent a client on an appellate and shall meet as soon as practical, and no later than 5 business days, with the monitor to discuss all relevant deadlines regarding the appeal. Defendant also shall meet monthly with the monitor at any time he has an appeal pending.

Defendant also shall be responsible for filing a quarterly progress report with the monitor. This quarterly report shall include the following information for each case in which Defendant has been appointed or agreed to represent a client on appeal:

- (1) The conviction date, (2) the date the notice of appeal was filed, (3) any extensions for appeal deadlines, (4) the date the record on appeal was required and perfected, (5) the date the appellate brief was required and filed, (6) any resolution in the appellate courts; and (7) the dates of meetings between the monitor and Defendant.

This report shall be reviewed and signed by the monitor and filed with the State Bar on a quarterly basis no later than January 1, April 1, July 1, and October 1, in each year of the stayed suspension. If Defendant is not handling any active appellate matters, Defendant must file a quarterly report with the State Bar signed by the monitor so stating.

The State Bar shall not be responsible for making any compensation or reimbursement for any person selected by Defendant as a monitor.

(d) Defendant shall not violate any provisions of the Rules of Professional Conduct at any time during the three year suspension;

(e) The defendant shall pay the costs of this proceeding, as assessed by the Secretary, within 30 days of entry of this order.

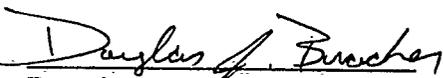
Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 29 day of December 1997.



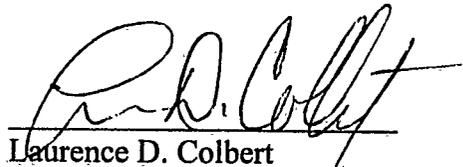
Chair, Hearing Committee

We Consent:



Douglas J. Brocker
Counsel for Plaintiff

Sworn to and subscribed before me, this the
5th day of January, 1998
Debra P. Hallard, Notary Public



Laurence D. Colbert
Defendant

My Commission Expires 3-28-99