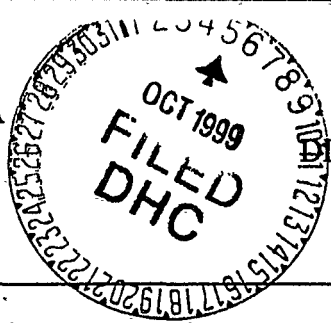


NORTH CAROLINA
WAKE COUNTY



2254
BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
99 DHC 9

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
v.)
)
MATHIAS P. HUNOVAL, Attorney,)
)
Defendant.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND
ORDER OF DISCIPLINE

This matter was heard on the 20th day of August, 1999, before a Hearing Committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; Jean Hauser, and Vernon A. Russell. The Defendant, Mathias Hunoval (hereafter, the Defendant), was represented by James B. Maxwell. The plaintiff was represented by Larissa J. Erkman. Based upon the pleadings, including the Stipulations on Pretrial Conference submitted by the parties, and the evidence introduced at the hearing, the Hearing Committee hereby enters the following:

FINDINGS OF FACT

1. The Plaintiff, 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. The Defendant was admitted to practice law in North Carolina in 1970 and has maintained an office for the practice of law in this State since that date. At all times relevant to this action, he was subject to the Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. At all times relevant to this matter, the Defendant maintained an office for the practice of law in Greensboro, North Carolina.
4. The Defendant was properly served with process and the hearing was held with due notice to all parties.
5. At approximately dinnertime on December 30, 1997, the Defendant and his son, Rob Hunoval, were in the restaurant/bar of the Bald Head Island Country Club on Bald Head Island in Brunswick County, North Carolina.

6. While in the restaurant/bar, the Defendant, the Defendant's son, and another patron, Robert Mauney, briefly engaged in conversation. In the presence of the Defendant and his son, Mr. Mauney used profanity several times. The Defendant believed that, in using the profane language, Mr. Mauney was directly addressing him. In response to what he believed to be a verbal assault, the Defendant struck Mr. Mauney on the side of his head with his fist.

7. As a result of this incident, the Defendant was charged in Brunswick County with misdemeanor assault inflicting serious injury. The warrant for his arrest was issued on March 30, 1998, and he was arrested on April 25, 1998.

8. On August 11, 1998, the Defendant entered a plea of no contest to the charge of misdemeanor assault inflicting serious injury. The Defendant was sentenced to 45 days in prison, which was suspended, and he was placed on unsupervised probation for 24 months subject to the standard probationary terms. He is required to successfully complete an anger management program in which he voluntarily enrolled and to reimburse Mr. Mauney for medical expenses in the sum of \$1,330.24, which has been paid. All conditions of the probation have been met to date. The remaining period of the 24-month probation will expire in August 2000.

9. On January 31, 1998, the Defendant was in a restaurant in Greensboro, North Carolina known as the Sunset Café. J. Michael Moreno entered the restaurant. Before Mr. Moreno was seated, the Defendant approached him and struck him once with his fist, knocking Moreno onto a table occupied by Mr. and Mrs. Bruce Quigley and their daughter, son-in-law and grandchildren. The Defendant contends that his assault on Mr. Moreno was precipitated by a telephone call that he received from Mr. Moreno in late 1995 or early 1996, wherein Mr. Moreno verbally attacked the Defendant using vulgar language.

10. As a result of the Defendant's assault on Mr. Moreno, Mr. and Mrs. Quigley received medical treatment from an emergency medical squad. The Defendant offered to reimburse the Quigleys for their medical expenses. The Defendant has also repaid the Sunset Café for damage to its carpet as a result of food spills.

11. As a result of the January 31, 1998 incident, the Defendant was charged with misdemeanor simple assault on February 1, 1998.

12. On September 17, 1998, the Defendant entered a plea of no contest to the charge of misdemeanor simple assault and was found guilty. The Defendant was sentenced to 30 days in jail, which was suspended, and was placed on two months of unsupervised probation with the standard terms of probation, which have now been satisfied.

13. On the 30th of April 1999, and upon receipt of a payment from the Defendant of \$5,000, Mr. Moreno executed and delivered a full, final and complete release to the Defendant for any and all claims arising out of the incident at the Sunset Café on January 31, 1998.

14. Since early 1998, the Defendant has been in counseling with Dr. Jack Coble, a psychologist in Greensboro, North Carolina. Dr. Coble has recommended that the Defendant periodically attend counseling sessions for the foreseeable future.

15. The State Bar has not raised any issues respecting the Defendant's conduct as it relates to any attorney-client relationship. The State Bar has not presented any evidence tending to show that the Defendant has failed to act competently and honestly in his practice of law.

16. The clear, cogent and convincing evidence demonstrates that the Defendant has struggled with and continues to struggle with personal and emotional problems related to a history of childhood abuse and alcoholism that, to date, do not appear to affect his capacity to practice law, but which have directly contributed to the unlawful conduct herein at issue.

Based upon the foregoing Findings of Fact and the stipulation of the Defendant, the Hearing Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee. The Committee has jurisdiction over the Defendant, Mathias Hunoval, 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)(1) and (2) in that the Defendant has been convicted of the misdemeanor criminal offenses of assault inflicting serious injury and simple assault showing professional unfitness in violation of General Statute 84-28(b)(1), and the Defendant has engaged in criminal acts constituting assault inflicting serious injury and simple assault, which acts reflect adversely on his fitness as a lawyer in violation of Rule 8.4(b) of the Revised Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the Hearing Committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

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

- a) A pattern of misconduct
- b) Multiple offenses

2. The Defendant's misconduct is mitigated by the following factors:

- a) Absence of dishonest motive.
- b) Personal or emotional problems.

- c) Timely good faith efforts to make restitution or to rectify consequences of misconduct.
- d) Full and free disclosure to the Grievance Committee and the DHC and cooperative attitude toward the proceedings.
- e) Character or reputation.
- f) Physical or mental impairment.
- g) Significant efforts toward interim rehabilitation.
- h) Imposition of other penalties or sanctions, including probationary criminal sentences, payment of court-ordered restitution to Mr. Mauney, and payment of civil damages to Mr. Moreno.

3. Given the nature and gravity of the misconduct, the pattern of misconduct and the multiple offenses, the aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the Hearing Committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of the Defendant, Mathias Hunoval, is hereby suspended for one year. The suspension of the Defendant's license is hereby stayed for two years upon the following terms and conditions:

- (a) The Defendant shall not violate any state or federal laws.
- (b) The Defendant shall not violate any provisions of the North Carolina State Bar Discipline & Disability Rules or the Revised Rules of Professional Conduct.
- (c) The Defendant shall pay all costs incurred in this proceeding and taxed against him by the Secretary of the North Carolina State Bar within 60 days of receiving notice of such costs.
- (d) The Defendant shall agree to be supervised by the North Carolina State Bar Lawyer Assistance Program and shall cooperate fully with the Lawyer Assistance Program. The Defendant shall enter into a consent order with the Lawyer Assistance Program within 30 days of service of this Order upon him and shall comply with all terms of the consent order throughout the period of the stayed suspension.
- (e) Upon the request of the Lawyer Assistance Program, the Defendant, at his expense, shall obtain an addiction and/or mental health evaluation by a physician approved by the Lawyer Assistant Program and shall submit to random alcohol/drug screens. Any evaluation or random drug screening conducted upon the request of the Lawyer Assistance Program shall comply with the addiction/mental health evaluation protocol or random drug screening protocol adopted by the Lawyer Assistance Program.