

WAKE COUNTY
NORTH CAROLINA



6043

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
01 DHC 12

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
LARRY W. BOWMAN, ATTORNEY)
Defendant)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on the 5th day of October, 2001, before a hearing committee of the Disciplinary Hearing Commission composed of Joseph G. Maddrey, Chair; W. Steven Allen Sr. and Betty Ann Knudsen. Defendant, Larry W. Bowman, did not appear. Douglas J. Brocker represented plaintiff. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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. Defendant, Larry W. Bowman (hereafter "Bowman"), was admitted to the North Carolina State Bar on September 1, 1974 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 the times relevant to this complaint, Bowman actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Dobson, Surry County, North Carolina.

4. Nell B. Fulcher retained Bowman in approximately March 1998 to represent her in filing a lawsuit against Johnny Hiatt arising from a boundary dispute and her claim for property damage (hereafter, "lawsuit").

5. At the time Ms. Fulcher retained Bowman, she provided him with original evidence on her claims, such as photographs of the property damage, "posted" signs, and a boundary marker that had been cut down.

6. After retaining him, Fulcher and her son, Martin Fulcher, regularly contacted Bowman regarding the status of filing the lawsuit.

7. Martin Fulcher advised Bowman on several occasions that the lawsuit needed to be filed before the statute of limitations expired.

8. Bowman assured Nell and Martin Fulcher that he would file the lawsuit before the statute of limitations expired.

9. Bowman did not file the lawsuit before the statute of limitations for filing the lawsuit expired, or thereafter.

10. After failing to file the lawsuit, Bowman failed to communicate or correspond with Nell or Martin Fulcher.

11. Ms. Fulcher made repeated attempts to contact Bowman and requested that he return her file and materials.

12. Bowman failed to respond to Ms. Fulcher's repeated attempts to contact him and failed to return her file and materials.

13. Fulcher was unable to regain her files and materials, including her original evidence. As a result, Fulcher has been unable to give these materials to another attorney to pursue the matter.

14. Nell Fulcher filed a grievance with the State Bar against Bowman.

15. On August 2, 2000, Bowman was served with a Letter of Notice, which required him to respond within 15 days of receipt of the letter.

16. Bowman failed to respond to the Letter of Notice.

17. On October 18, 2000, Bowman was sent a follow-up letter asking him to respond to Ms. Fulcher's grievance by October 29, 2000.

18. Bowman failed to respond to this second letter.

19. On November 6, 2000, Bowman was sent another follow-up letter asking him to respond to Ms. Fulcher's grievance by November 17, 2000.

20. Bowman failed to respond to this third letter.

21. On January 9, 2001, Bowman was served with a subpoena to appear at the State Bar's Grievance Committee meeting on January 18, 2001 regarding Ms. Fulcher's grievance.

22. Bowman failed to appear at the State Bar's Grievance Committee meeting on January 18, 2001 in response to the subpoena.

23. Bowman was personally served with the summons and complaint in this DHC matter by the Carroll County Sheriff's Department in Virginia on July 16, 2001.

24. Bowman's answer to the complaint was due no later than August 6, 2001.

25. Bowman did not file an answer or other pleading in this action and did not file a motion to extend time to file an answer or other pleading.

26. The secretary entered default against Bowman on August 13, 2001.

27. Bowman was personally served by the Carroll County Sheriff's Department in Virginia on August 29, 2001 with the motion for entry of default, entry of default, grounds for personal jurisdiction, motion for order of discipline, notice of hearing and order setting hearing.

Based upon 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 Bowman and the subject matter.
2. Bowman'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) & (3) in that Bowman committed the following violations of the Revised Rules of Professional Conduct (hereafter "Revised Rules"):
 - (a) by failing to file suit on her behalf before the statute of limitations expired, Bowman failed to act with reasonable diligence and promptness in representing Nell Fulcher in violation of Revised Rule 1.3;
 - (b) by failing to keep Ms. Fulcher reasonably informed about the status of her legal matter and promptly complying with reasonable requests for information, Bowman violated Revised Rule 1.4(a);

- (c) by failing to surrender Fulcher's papers and property to her and failing to take steps to protect Ms. Fulcher, Bowman violated Revised Rule 1.16(d); and
- (d) by failing to respond to the Letter of Notice and follow-up letters and by failing to appear in response to the subpoena to appear and produce documents, Bowman knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

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 the additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. On December 7, 2000, Bowman was suspended by the NC State Bar Council for non-payment of his 2000 membership fee, client security fund assessment and late fee. Bowman was personally served with the administrative suspension order on January 9, 2001.

2. On December 11, 2000, Bowman was issued a show cause notice from the Board of Continuing Legal Education ("CLE") for failure to complete his attendance requirements for the years 1998 and 1999. Bowman was personally served with the show cause notice on January 9, 2001. The CLE Board did not proceed further with its own administrative suspension because Bowman already had been administratively suspended for non-payment of membership dues.

3. On May 18, 1998, Bowman was issued an Admonition by the Grievance Committee of the North Carolina State Bar for his failure to acquire a title policy for his client in violation of Revised Rule 1.3 and for his failure to answer his client's inquiry about the status of the title policy promptly in violation of Revised Rule 1.4(a).

4. On October 24, 2000, Bowman was issued an Admonition by the Grievance Committee of the North Carolina State Bar for Bowman's failure to act with reasonable diligence and promptness in violation of Revised Rule 1.3 and for his failure to respond to the resulting grievance in violation of Revised Rule 8.1(b).

5. Bowman's conduct is aggravated by the following factors:
- A. prior disciplinary offenses;
 - B. pattern of misconduct with special emphasis on previous neglect cases;
 - C. multiple offenses;
 - D. substantial experience in the practice of law; and
 - E. indifference to making restitution.

6. Bowman's misconduct is mitigated by the following factors:

- A. absence of a dishonest or selfish motive;
- B. personal or emotional problems; and
- C. physical or mental disability or impairment.

7. 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. Defendant, Larry W. Bowman, is hereby suspended from the practice of law for one year beginning 30 days from service of this order upon him.

2. Bowman shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.

3. Bowman shall pay the costs of this proceeding as assessed by the Secretary no later than 30 days following service of this order.

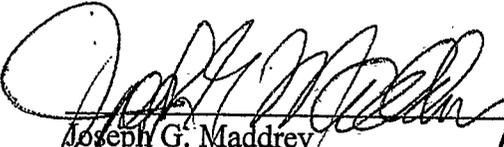
4. Bowman shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules (hereafter, "Discipline Rule _-").

5. Prior to reinstatement, Bowman shall file a verified petition as set forth in Discipline Rule § .0125 establishing all of the following conditions by clear, cogent, and convincing evidence:

- (a) Bowman complied with all provisions of Discipline Rule .0124 prior to his suspension;
- (b) Bowman has complied with all provisions of Discipline Rule § .0125;
- (c) Bowman shall return to Nell Fulcher her client file, including all original papers;
- (d) Bowman shall pay all membership fees delinquent on the effective date of his disciplinary suspension under this order;
- (e) Bowman shall satisfy all Continuing Legal Education requirements delinquent on the effective date of his disciplinary suspension under this order;

(f) Bowman shall submit a written certification from his treating psychiatrist that he has followed all recommendations for treatment of any diagnosed psychological or psychiatric condition(s), including depression, for the past six months. Bowman also must execute a release allowing the State Bar to obtain his medical records and attach that release to his petition for reinstatement. If Bowman's treating psychiatrist is not known by or acceptable to the State Bar, the State Bar shall have the right to have Bowman evaluated by a psychiatrist, selected by it, before any order is entered reinstating Bowman's license.

✓ 4/27 Signed by the chair with the consent of the other hearing committee members, this the
day of October 2001.


Joseph G. Maddrey
Hearing Committee Chair