

NORTH CAROLINA
WAKE COUNTY



20973

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
01 DHC 9

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
JAMES ALAN FLYNT, Attorney,)
Defendant.)

**CONSENT ORDER
OF DISCIPLINE**

This matter came on to be considered by the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, §.0114(h). The parties stipulate and agree to the following Findings of Fact, Conclusions of Law, and Additional Findings of Fact Relevant to Discipline recited in this Consent Order and to the discipline imposed. The defendant has agreed to waive formal hearing in the above-referenced matter. The parties stipulate that these matters may be resolved by the undersigned Hearing Committee, and that the defendant further waives his right to appeal this Consent Order or challenge, in any way, the sufficiency of the findings. The Hearing Committee 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 General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The Defendant, James Alan Flynt (hereinafter, "Flynt") was admitted to the North Carolina State Bar on August 26, 1994 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 periods relevant herein, Flynt actively engaged in the practice of law in the State of North Carolina and has maintained law offices in the city of Raleigh, Wake County, North Carolina, Greenville, Pitt County, North Carolina and in other venues within North Carolina.

(OLSON)

4. On or about February 13, 1998, Kenneth J. Olson (hereinafter, "Olson") retained Flynt to represent him in a partnership dispute involving a dissolving partnership, Baggage Delivery Service (hereinafter, BDS).

5. At the time, Flynt practiced law in an office sharing arrangement with Huggard, Obiol and Blake, P.L.L.C. in Raleigh, Wake County, North Carolina.

6. Olson transferred \$1,573.00 of the BDS partnership funds to Flynt, which were deposited into Flynt's trust account.

7. Flynt deposited the \$1,573.00 in trust to preserve the funds, as the BDS partners disputed ownership of the funds.

8. In or about August 1998, Flynt ceased communicating with Olson when Flynt's communications went unanswered by Olson.

9. Flynt did not return the funds to Olson.

10. On May 3, 1999, Olson filed a grievance with The Grievance Committee of the Tenth Judicial District Bar (Wake County).

11. On June 7, 1999, the Chair of the Grievance Tenth Judicial District Bar sent a Letter of Notice (hereafter Olson Letter of Notice) to Flynt pursuant to 27 NCAC 1B §.0112(c), along with a copy of the grievance.

12. Flynt failed to respond to the Letter of Notice within fifteen (15) days as required by §.0112(c).

13. On July 2, 1999, the Executive Director of the Tenth Judicial District Bar sent a follow-up letter to Flynt requesting a response.

14. The Tenth Judicial District Bar's investigating attorney, Cindy Wittmer, called Flynt twice, leaving messages on Flynt's direct dial voice mail explaining the nature of the call and requesting that he return the calls.

15. Flynt was in the office when Wittmer called.

16. Flynt failed to return Wittmer's calls.

17. The Tenth Judicial District Bar forwarded the grievance to the North Carolina State Bar because of the lack of response.

18. The State Bar's Letter of Notice, Substance of the Grievance, and a Subpoena for Cause Audit were personally served upon Flynt on October 5, 1999, pursuant to 27 NCAC 1B §.0112 and North Carolina Rule of Civil Procedure 4(j)(1)a.

19. Flynt responded in writing in correspondence dated October 13, 1999.

(SADIK)

20. On August 4, 1998, Flynt signed a letter of engagement to provide legal services to Dr. Sidki Sadik (hereinafter, "Sadik").

21. During the representation, Sadik made repeated, reasonable requests for information.

22. Flynt failed to adequately respond to Sadik's reasonable requests for information concerning his case.

23. On December 29, 1998, Sadik requested Flynt to return the remaining \$100.00 of a refundable retainer that Flynt was holding in his trust account.

24. Flynt was holding Sadik's \$100.00 in trust.

25. Flynt, through negligence, failed to assign the initial retainer deposit to Sadik on his computerized accounting software. Subsequent accountings and reports failed to show any balance being held for Sadik.

26. Flynt failed to respond to Sadik's request for the return of the funds.

27. On January 19, 1999, Sadik filed a grievance against Flynt with the North Carolina State Bar.

28. On March 23, 1999, the North Carolina State Bar mailed the Letter of Notice (the "Sadik Letter of Notice") and the Substance of Grievance, by certified mail, postage prepaid article number Z535716628 to Flynt's address of record with the North Carolina State Bar, 124 St. Mary's Street, Raleigh, North Carolina 27605.

29. On March 23, 1999, someone signed the certified mail card acknowledging receipt of the documents as evidenced by the certified mail receipt article number Z 535 716 628.

30. Flynt failed to respond to the Sadik Letter of Notice within fifteen (15) days as required by §.0112(c).

31. A North Carolina State Bar staff attorney mailed to Flynt a follow-up letter on April 19, 1999, to which Flynt also failed to respond.

(BLUM)

32. In or about May 1996, John P. Blum (hereinafter, "Blum"), in his capacity as Executor, engaged Flynt to render legal services on behalf of the Estate of Elaine Depiazzy, Wake County file number 95-E-2240.

33. Flynt failed to adequately communicate with Blum about the Estate.

34. In or about March 2000, Blum learned that Flynt had vacated his law office without communicating the move or providing a forwarding address to Blum.

Based upon the consent of the parties and the foregoing Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By failing to timely respond to the Tenth Judicial District Bar's Olson Letter of Notice and by failing to respond promptly to its follow up inquiries, Flynt violated Revised Rule of Professional Conduct 8.1(b);
2. By failing to respond to the Sadik Letter of Notice within fifteen (15) days as required by 27 NCAC, Chapter 1, Subchapter B, §.0112(c), Flynt violated Revised Rule of Professional Conduct 8.1(b);
3. By failing to promptly pay or deliver trust funds to his client, Olson, after being directed by the client to pay him the funds, Flynt violated Revised Rule of Professional Conduct 1.15-2(h);
4. By failing to keep Olson, Sadik, and Blum reasonably informed about the status of their respective matters and by failing to promptly comply with his clients' reasonable requests for information, Flynt violated Revised Rule of Professional Conduct 1.4(a); and
5. By failing to act with diligence and promptness in representing Olson and Sadik, Flynt violated Revised Rule of Professional Conduct 1.3;

ADDITIONAL FINDINGS OF FACT RELEVANT TO DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
 - a) failure to respond
 - b) multiple offenses
2. The defendant's misconduct is mitigated by the following factors:
 - a) good character
 - b) no prior discipline
 - c) absence of dishonest or selfish motive
 - d) remorse
3. The mitigating factors outweigh the aggravating factors.

Based upon the consent of the parties and the foregoing Findings of Fact, Conclusions of Law, the Additional Findings of Fact Relevant to Discipline, the Committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, James Alan Flynt ("Flynt"), is hereby suspended from the practice of law in North Carolina for one year, effective 30 days from the date of service of this order upon him.

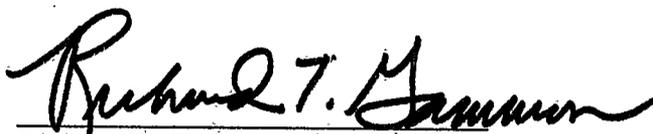
2. The one-year suspension is stayed for one year, based upon the following conditions:

- a) Within 30 days after service of the disciplinary order upon him, Flynt shall execute any and all medical and psychiatric authorization releases in favor of the North Carolina State Bar, to permit Flynt's psychiatrist, selected under the terms of paragraph b) below, to release Flynt's medical and psychiatric information to a designated representative of the Lawyer Assistance Program (hereafter, LAP) of the North Carolina State Bar.
- b) Within 30 days after service of the disciplinary order upon him, Flynt shall make an appointment with a board certified psychiatrist who is a member of the North Carolina Chapter of Addiction Medicine and is acceptable to the North Carolina State Bar for an evaluation of Flynt's mental or emotional health. This evaluation shall include a substance abuse assessment of Flynt. Within five days of making the appointment with the psychiatrist, Flynt shall notify the North Carolina State Bar of the name, address, and telephone number of the psychiatrist he wishes to use. The North Carolina State Bar shall advise Flynt as quickly as possible of its approval or disapproval of the psychiatrist that Flynt wishes to use. If the psychiatrist recommends Flynt receive treatment for any mental or emotional problem or receive treatment for any substance abuse problem, Flynt shall follow the prescribed course of treatment for as long as the psychiatrist recommends. Flynt's psychiatrist shall notify the North Carolina State Bar of the date that the Flynt begins his treatment for any mental, emotional, or substance abuse problems and shall to mail a designated LAP representative quarterly reports of Flynt's status. At the conclusion of Flynt's treatment, if any, the psychiatrist shall file a final report with the North Carolina State Bar about Flynt's treatment. The quarterly and final reports shall specifically include the psychiatrist's opinion about whether Flynt suffers from any mental, emotional, or substance abuse problems which will interfere with his performing the obligations necessary to practice law. In the event that Flynt fails to comply with his psychiatrist's prescribed course of treatment, his psychiatrist shall notify the LAP representative of the non-compliance as soon as is practicable for the psychiatrist.
- c) Within 30 days after service of the disciplinary order upon him, Flynt shall pay all back Membership dues with any Client Security Fund assessment and late fees assessed.

- d) Within 90 days after service of the disciplinary order upon him, Flynt shall cure all deficiencies regarding his Continued Legal Education and pay any late fees assessed.
 - e) Within 30 days after service of the disciplinary order upon him, Flynt shall make the following disbursements from his trust account:
 - i. to Mr. Kenneth J. Olson, the sum of \$1,573.00; and
 - ii. to Dr. Sidki Sadik, the sum of \$100.00.
 - f) Flynt shall respond to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated within the communication.
 - g) Flynt shall not violate any of the Revised Rules of Professional Conduct during the period of the stay.
 - h) Flynt shall not violate any laws of the State of North Carolina or of the United States during the period of the stay.
 - i) Flynt shall pay all costs incurred in this proceeding, *N.C. State Bar v. Flynt*, 01DHC9, and taxed against him within six months of the date this disciplinary order is served upon him.
3. If the suspension of Flynt's law license is activated for any reason, Flynt shall complete each of the following as conditions precedent to seeking reinstatement:
- a) Flynt must demonstrate that he has fully complied with all provisions of 27 NC. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the North Carolina State Bar Discipline & Disability Rules.
 - b) Flynt must demonstrate by clear, cogent and convincing evidence that he is not suffering from any mental or physical condition that impairs his professional judgment or ability to engage in the practice of law in a competent manner.
 - c) Flynt must make the following disbursements from his trust account:
 - i. to Mr. Kenneth J. Olson, the sum of \$1,573.00; and
 - ii. to Dr. Sidki Sadik, the sum of \$100.00.
 - d) Flynt must pay all costs incurred in this proceeding, *N.C. State Bar v. Flynt*, 01DHC9, and taxed against him .

This the 2 day of Nov, 2001.

Signed by the Chairman of the Hearing Committee with the consent of the other
Hearing Committee Members.

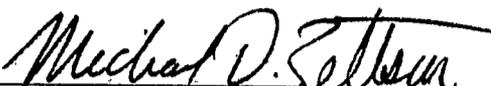


Richard T. Gammon, Chairman
Disciplinary Hearing Committee

Seen and consented to:



James Alan Plynt, Attorney
Defendant



Michael D. Zetts III, Deputy Counsel
North Carolina State Bar