

WAKE COUNTY
NORTH CAROLINA



14221

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
01 DHC 16

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
DARWIN LITTLEJOHN, Attorney,)
Defendant)

CONSENT
FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was scheduled to be heard on the 12th day of October, 2001 before a hearing committee of the Disciplinary Hearing Commission composed of Elizabeth Bunting, Chair; Fred H. Moody, Jr., and Lorraine Stephens. Urs R. Gsteiger represents the defendant, Darwin Littlejohn. A. Root Edmonson represents the plaintiff. 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, Darwin Littlejohn (hereinafter, "Littlejohn") was admitted to the North Carolina State Bar on August 22, 1987 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 Littlejohn was actively engaged in the practice of law in Forsyth County, North Carolina, and maintained a law office in Winston-Salem.

4. During the week of December 15, 1998, a deputy sheriff contacted Jill S. Shafti (hereinafter, "Shafti") about a judgment against Shafti and her husband.

5. Prior to December 21, 1998, Shafti met with Littlejohn. Littlejohn agreed to attempt to get a judge to stay the execution once he was retained. Littlejohn agreed that the judgment should have been against her husband's business rather than against either Shafti or her husband personally.

6. Shafti paid Littlejohn \$250.00 toward his quoted \$500.00 fee to file something immediately to keep her from losing her car.

7. On January 4, 1999, a deputy sheriff appeared at Shafti's house to take her car to apply toward the judgment. Although Shafti called Littlejohn for immediate assistance, he was only willing to refund her money.

8. Littlejohn failed to take prompt action on Shafti's behalf and failed to tell her he wouldn't be able to promptly assist her in the matter.

9. As a result of Littlejohn's failure to take prompt action on Shafti's behalf, the deputy took her car.

10. On April 13, 1999, Harold Lee Hairston (hereinafter, "Hairston") paid Littlejohn \$1,500.00 for representation in a domestic case.

11. Hairston made many telephone calls to Littlejohn's office and left messages to which Littlejohn did not respond. Hairston made an appointment to see Littlejohn on April 22, 1999.

12. On April 22, 1999, Hairston went to Littlejohn's office, but Littlejohn was not able to meet with Hairston.

13. Hairston made several more telephone calls to Littlejohn's office and left messages to which Littlejohn did not respond. As a result, on April 27, 1999, Hairston wrote to Littlejohn asking for his retainer to be refunded.

14. Hairston attempted to represent himself at his child support hearing on May 11, 1999. However, after the hearing was underway, Littlejohn appeared and assisted Hairston.

15. After the hearing, Hairston asked for the unearned portion of his fee to be refunded.

16. Littlejohn failed to make a prompt refund.

17. Littlejohn later agreed to make a \$1,300.00 refund to Hairston with \$450.00 to be paid by October 19, 1999 and \$850.00 to be paid by December 12, 1999.

18. Littlejohn made the October payment but failed to make the December payment on time. Littlejohn eventually reimbursed Hairston the remaining portion of his refund.

19. On March 4, 1998, Janie Ellis (hereinafter, "Ellis") paid Littlejohn \$525.00 to represent her in pursuing a remedy against automobile sales company concerning a car Ellis had purchased that continually broke down.

20. In January 1999, Ellis asked Littlejohn for a refund of her fee.

21. In May 1999, after Littlejohn failed to make a refund, Ellis filed a fee dispute arbitration request against Littlejohn with the State Bar's fee dispute arbitration program.

22. On May 6, 1999, the State Bar sent Littlejohn notice of Ellis' fee dispute request and advised Littlejohn of his obligation to respond to the fee dispute.

23. Littlejohn failed to timely respond to Ellis' fee dispute.

24. On July 6, 1999, a representative of the fee dispute arbitration program, Harry B. Warren, called Littlejohn's secretary and informed her that Littlejohn needed to respond to Ellis' fee dispute.

25. Littlejohn returned Mr. Warren's call and promised that he would send a written response "post haste."

26. Littlejohn did not respond to Ellis' fee dispute until August 26, 1999. By that date, Littlejohn had gotten a judgment for Ellis against Bibeau & Sons Auto Sales.

27. On June 16, 1999, Terence D. Stocks, Sr. (hereinafter, "Stocks") paid Littlejohn \$750.00 to represent him in a child support and visitation matter.

28. Over a two-month period, Littlejohn failed to return some of Stocks' telephone calls about the matter.

29. On August 9, 1999, after Stocks' problems with his visitation worsened, Stocks contacted Littlejohn's office. Littlejohn told Stocks to come to his office on August 10, 1999 and there would be papers ready for Stocks to review.

30. When Stocks arrived at Littlejohn's office at 5:30 p.m. on August 10, 1999, Littlejohn had no documents prepared. Littlejohn told Stocks that his secretary would have the documents ready for Stocks the next day.

31. On August 11, 1999, Stocks contacted Littlejohn's secretary and found that no documents were ready for Stocks.

32. On March 29, 1999, Carlos Dixon (hereinafter, "Dixon") paid Littlejohn \$500.00 as a partial payment of his fee for representation in a criminal matter.

33. Littlejohn told Dixon's girlfriend that he would file a motion for reduction of Dixon's bond. At the time, \$1,500.00 was owed on Littlejohn's fee.

34. On March 31, 1999, the remaining \$1,500.00 of Littlejohn's fee was paid.

35. Littlejohn failed to file a bond reduction motion for Dixon. As a result, Dixon discharged Littlejohn two months later.

36. Because Littlejohn failed to take action on his behalf, Dixon filed a grievance against Littlejohn with the 21st District Bar's grievance committee.

37. Littlejohn failed to make a written response to the grievance. Littlejohn did advise the investigating member of the grievance committee that he was working with Harry Warren to resolve a fee dispute filed by Dixon. The fee dispute was resolved.

38. On June 17, 1999, Sharon Wright (hereinafter, "Wright") paid Littlejohn a \$200.00 partial payment to represent her husband, Ronald Wright, in a petition to get Ronald's driver's license reinstated.

39. On August 16, 1999, Ronald Wright received a letter from the Division of Motor Vehicles that showed that Littlejohn had filed nothing on Ronald's behalf.

40. Between August 16 and August 23, 1999, Wright called Littlejohn ten times on her husband's behalf to get information about the matter. Each time, Wright left a message, but Littlejohn did not return her calls.

41. During that same time period, Wright stopped by Littlejohn's office twice and left messages for Littlejohn to call her back.

42. On August 24, 1999, Wright sent Littlejohn a certified letter requesting a refund of her husband's unearned fee.

43. On August 25, 1999, Wright left Littlejohn another message for Littlejohn to return her call.

44. Littlejohn never responded to Wright's requests for information concerning her husband's matter.

45. Littlejohn failed to promptly refund Wright's husband's unearned fee. However, when Littlejohn was able to do so, he refunded the fee.

46. Jon S. Michalec (hereinafter, "Michalec") was charged with a federal criminal offense.

47. Michalec entered a guilty plea with the assistance of an assistant public defender.

48. On November 25, 1997, Michalec paid Littlejohn \$2,000.00 to assist him in the sentencing phase of the case because Littlejohn seemed to understand the technology involved in the computer related crime and Michalec's position on sentencing.

49. In January 1998, Michalec gave Littlejohn the pre-sentence report in his case, which recommended that Michalec receive a 30-month sentence.

50. Over the next four months, Littlejohn failed to respond to some of Michalec's calls.

51. In June 1998, Michalec was sentenced in federal court. Michalec was represented in the sentencing hearing only by the assistant public defender.

52. In or about July 1998, after discovering some discrepancies between the indictment and the criminal judgment, Michalec had his fiancé contact Littlejohn.

53. In August 1998, Michalec's fiancé paid Littlejohn another \$1,000.00 to attempt to get Michalec's sentence reduced.

54. Littlejohn subsequently failed to respond to Michalec's fiancé's requests for information about the matter and failed to respond to her requests for a refund if he wasn't going to be able to promptly file something for Michalec.

55. Littlejohn never entered any appearance for Michalec and never provided assistance to Michalec's public defenders.

56. Littlejohn didn't promptly refund Michalec's unearned fee despite demands made by Michalec and his fiancé. However, Littlejohn made a refund when he was able to do so.

57. Donnie Richardson (hereinafter, "Richardson") had a child support hearing scheduled for June 2, 1999 in Guilford County District Court in Greensboro, NC.

58. On May 25, 1999, Richardson paid Littlejohn \$200.00 toward his \$500.00 quoted fee for Littlejohn to represent him at the June 2, 1999 hearing.

59. On June 2, 1999, Richardson went to court in Greensboro and had his case continued until June 9, 1999.

60. Also on June 2, 1999, Richardson went to Littlejohn's office to advise his office of the June 9 court date. While there, Richardson paid Littlejohn another \$100.00 toward the fee.

61. On June 8, 1999, Littlejohn advised Richardson for the first time that he would not be able to accompany Richardson to court in Greensboro on the following day. Littlejohn promised to make a refund to Richardson.

62. Littlejohn failed to make a refund of the unearned retainer to Richardson until August 11, 1999.

63. On March 10, 1999, Barbara Henry (hereinafter, "Henry") paid Littlejohn \$750.00 to represent her and her husband in attempting to gain custody of her husband's two children.

64. Littlejohn advised Henry that his paralegal would let her know when to come in and sign the custody papers.

65. After not getting a call from Littlejohn's paralegal, Henry started calling and leaving messages for Littlejohn.

66. Littlejohn did not return some of Henry's calls.

67. Henry sent Littlejohn a letter by fax and certified mail explaining that she had been trying to find out what was happening in the custody matter and nobody was returning her calls. In her letter, Henry asked for a refund of the fee.

68. During the third week in May 1999, an employee from Littlejohn's office told Henry that Littlejohn was going to prepare an itemized statement and refund the unearned portion of Henry's fee.

69. Littlejohn didn't take prompt action to assist Henry and her husband in gaining custody of her husband's children.

70. Littlejohn failed to make a prompt refund of the unearned portion of Henry's fee. However, Littlejohn made a refund when he was able to do so.

71. In September 1995, Jenny Burton-Hairston (hereinafter "Burton-Hairston") retained Littlejohn to represent her in a domestic matter.

72. Littlejohn obtained a 50B domestic violence order for Burton-Hairston in 1995, but failed to pursue the remaining issues in the case.

73. Littlejohn did not communicate adequately with Burton-Hairston after the 50B order was filed.

74. After being assaulted by her estranged husband in June 1998, Burton-Hairston found that her domestic case had been dismissed in March 1997 for lack of prosecution. Although Littlejohn had received a copy of the order of dismissal, he had never sent Burton-Hairston a copy.

75. After discovering that her case had been dismissed, Burton-Hairston filed a grievance against Littlejohn with the 21st District Bar's grievance committee.

76. Littlejohn failed to respond to the grievance in writing after being given notice of his obligation to do so.

77. Terry W. Tullock (hereinafter, "Tullock") retained Littlejohn to represent him on a charge of driving while license revoked pending in Forsyth County District Court.

78. In May 1999, Tullock paid Littlejohn \$430.00 of his \$500.00 quoted fee.

79. Littlejohn had Tullock's case continued three times. On August 6, 1999, when Tullock's case was on the calendar and called for hearing, Littlejohn failed to timely appear in court on his behalf.

80. Tullock obtained a continuance until September 3, 1999.

81. Tullock scheduled an appointment with Littlejohn for August 12, 1999. Tullock arrived at Littlejohn's office at the appointed time, but Littlejohn was not able to meet with Tullock.

82. Between May and September 1999, Tullock made approximately 25 telephone calls to Littlejohn's office seeking information.

83. Littlejohn didn't promptly return Tullock's calls. As a result, Tullock discharged Littlejohn and asked for a refund of his fee.

84. Littlejohn failed to make a prompt refund of the unearned portion of Tullock's fee.

85. Roger Lyons paid Littlejohn \$2,000.00 to represent Lyons in a custody matter.

86. Littlejohn failed to return Lyons' calls seeking information about his case.

87. In July 1999, Mary Parker (hereinafter, "Parker") retained Littlejohn to file an action for her seeking a change of custody of her minor daughter, Alexandra Camille Hensley (hereinafter, "Alexandra."). Alexandra was spending part of her summer vacation with Parker but was scheduled to return to Tennessee at the end of July.

88. Parker advised Littlejohn that the action would need to be filed prior to the date that Parker was supposed to return Alexandra to Tennessee.

89. Littlejohn failed to file an action for Parker prior to the end of July 1999.

90. Parker failed to return Alexandra to her father's custody in late July 1999 and thereafter was charged with custodial interference in Tennessee.

91. Alexandra's father filed an action in Forsyth County District Court to enforce his Tennessee custody order.

92. Although Parker advised Littlejohn of the enforcement action, Littlejohn failed to file a response to the enforcement action on Parker's behalf.

93. As a result of Littlejohn's failure to take action on her behalf in the custody matter, Parker filed a grievance with the 21st District Bar's grievance committee.

94. Littlejohn failed to timely respond to the grievance after being given notice of his obligation to do so.

95. On December 21, 1999, Donna Lynn Baker (hereinafter, "Baker") was served with a restraining order obtained by her minor daughter's father and a motion for preliminary injunction scheduled to be heard on December 30, 1999.

96. On or about December 27, 1999, Baker retained Littlejohn to represent her in the matter.

97. On December 30, 1999, Littlejohn agreed with opposing counsel to a continuance of the preliminary injunction hearing to January 14, 2000 upon certain conditions.

98. Opposing counsel prepared a proposed order of continuance that also contained provisions requiring Baker to provide medical records relating to her minor child and requiring the minor child to see a psychiatrist prior to the preliminary injunction hearing. The proposed order was faxed to Littlejohn on December 30, 1999.

99. On January 4, 1999, opposing counsel faxed Littlejohn a letter saying that he would get the proposed order signed unless Littlejohn objected.

100. Littlejohn did not send Baker a copy of the proposed order.

101. Littlejohn failed to object to the proposed order.

102. On January 7, 2000, Littlejohn received a copy of the signed order from opposing counsel.

103. Littlejohn did not send a copy of the signed order to Baker.

104. Littlejohn advised Baker that his office was attempting to find a psychiatrist who could evaluate Baker's minor child, but did not advise her that there was any time limit for getting the evaluation completed. Littlejohn also failed to tell Baker to produce the child's medical records by the January 14, 2000 court date.

105. On January 13, 2000, Littlejohn's office communicated with Baker to advise her that Littlejohn would not be able to attend the January 14, 2000 hearing due to illness. However, the communication did not advise Baker about her obligations contained in the order of continuance.

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 Littlejohn and the subject matter.

2. Littlejohn's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) as follows:

- (a) By failing to take prompt action to stay execution of the judgment against Shafti, Littlejohn failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (b) By failing to take prompt action to get Stocks' documents prepared in his custody and visitation matter, Littlejohn failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (c) By failing to take prompt action on Michalec's behalf in either the sentencing or the sentence reduction matters, Littlejohn failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (d) By failing to take prompt action on behalf of Henry and her husband in the custody matter, Littlejohn failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (e) By failing to take prompt action to get the other issues in Burton-Hairston's domestic case resolved, Littlejohn failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (f) By failing to take prompt action on Parker's behalf seeking a change of custody of her minor daughter, Alexandra, prior to the date Alexandra was supposed to return to Tennessee, Littlejohn failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (g) By failing to file a response on Parker's behalf to the enforcement action brought by Alexandra's father, Littlejohn failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (h) By failing to send Baker a copy of the order continuing the preliminary injunction hearing or to otherwise advise Baker of the necessity of producing her minor child's medical records and having the child evaluated by a psychiatrist prior to the January 14, 2000 hearing,

Littlejohn failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.

- (i) By failing to take prompt action on behalf of Dixon and Ronald Wright, Littlejohn failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (j) By failing to communicate to Shafti that he would not be able to take prompt action to stay execution of the judgment against her, Littlejohn failed to explain a matter to the extent reasonably necessary to permit his client to make an informed decision regarding the representation in violation of Rule 1.4(b).
- (k) By failing to communicate with Burton-Hairston before her domestic case was dismissed and by failing to send her a copy of the order dismissing her case, Littlejohn failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of Rule 1.4(b).
- (l) By failing to communicate to Baker the necessity of producing her minor child's medical records and having the child evaluated by a psychiatrist prior to the January 14, 2000, Littlejohn failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of Rule 1.4(b).
- (m) By failing to communicate with Hairston, Stocks, Wright, Michalec, Henry, Tullock and Lyons in response to their requests for information concerning their matters, Littlejohn failed to keep his clients reasonably informed about the status of matters and promptly comply with reasonable requests for information in violation of Rule 1.4(a).
- (n) By failing to make a timely refund of the unearned portion of fees paid by Hairston, Wright, Michalec, Richardson, Henry and Tullock, Littlejohn failed to refund advance payment of fees that had not been earned in violation of Rule 1.16(d).
- (o) By failing to timely respond to the State Bar's notice of Ellis' fee dispute, Littlejohn failed to participate in good faith in nonbinding arbitration of Ellis' fee dispute in violation of Rule 1.5(f).
- (p) By failing to tell Richardson that he would be unable to represent him at the June 9, 1999 hearing in Greensboro until the day before the hearing,

Littlejohn failed to give reasonable notice to his client of his unavailability in violation of Rule 1.16(d).

- (q) By failing to timely respond to the 21st District Bar's grievance committee's requests for information in the Burton-Hairston and Parker matters, Littlejohn failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

Based upon the foregoing Findings of Fact and Conclusions of Law and further consent of the parties, 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.
 - (c) Substantial experience in the practice of law.
2. The defendant's misconduct is mitigated by the following factors:
 - (a) Absence of prior disciplinary record.
 - (b) Personal or emotional problems.
 - (c) Physical or mental impairment.
3. 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, Darwin Littlejohn, is suspended for two years.
2. The two-year suspension is stayed for three years on the following terms and conditions:
 - a. Littlejohn shall violate no federal or state laws.

b. Littlejohn shall violate no provisions of the Revised Rules of Professional Conduct.

c. Littlejohn shall respond to any communication relating to a grievance or fee dispute in a timely fashion.

d. Littlejohn shall handle all client matters promptly, shall respond to requests for information from clients in a timely fashion, and shall ensure that his caseload remains of a manageable size.

e. Littlejohn shall select a member of the Forsyth County Bar (hereinafter referred to as the "Supervising Attorney", to be approved by the Office of Counsel, to supervise Littlejohn's practice during the three-year stay period. Littlejohn shall designate a Supervising Attorney and obtain the approval of the Office of Counsel within fifteen days from the date of this order.

f. Littlejohn shall meet with the Supervising Attorney at least once a quarter. Littlejohn shall report to the Supervising Attorney the status of his current pending client matters. Littlejohn shall cooperate with the Supervising Attorney. Littlejohn shall provide any information requested by the Supervising Attorney that the Supervising Attorney feels is reasonably necessary to ensure that Littlejohn's caseload is maintained at a manageable size, that Littlejohn handles matters promptly, and that Littlejohn responds to requests for information from clients, the 21st District Bar, and the North Carolina State Bar in a timely fashion. The cost, if any, of retaining the Supervising Attorney shall be borne by Littlejohn.

g. Littlejohn shall provide semi-annual reports to the Office of Counsel during the period of the stay, signed by Littlejohn and the Supervising Attorney, certifying that Littlejohn is in compliance with the terms and conditions of the above paragraph of this order. The reports shall be completed and transmitted to the Office of Counsel by each six-month anniversary of the date of this order.

g. Littlejohn shall enter into a contract with the Lawyer Assistance Program by November 1, 2001. Littlejohn shall comply with the terms of that contract. As a part of that contract, Littlejohn shall authorize the Lawyer Assistance Program to report any failure to comply with the terms of this paragraph, and the specifics related thereto, to the Office of Counsel.

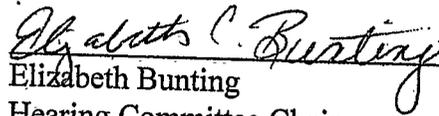
h. Littlejohn shall schedule an appointment with Dr. DeWayne Book, or some other psychiatrist acceptable to the Lawyer Assistance Program, for a

psychiatric evaluation. Littlejohn shall authorize the psychiatrist to report the results of the evaluation to the Lawyer Assistance Program. Any treatment recommendation shall be incorporated into the contract Littlejohn enters into with the Lawyer Assistance Program. Littlejohn shall follow any treatment recommendations made by the psychiatrist and authorize the Lawyer Assistance Program to report any failure to follow the psychiatrist's treatment plan, and the specifics related thereto, to the Office of Counsel.

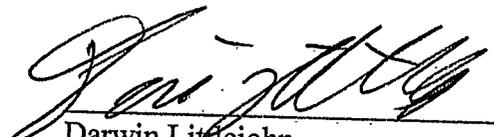
i. Littlejohn shall pay the costs of this proceeding by December 31, 2001.

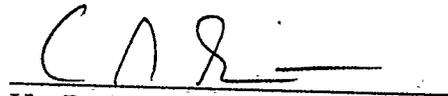
Signed by the chair with the consent of the other hearing committee members, this

8th ^{November} day of ~~October~~, 2001.


Elizabeth Bunting
Hearing Committee Chair

CONSENTED TO BY:


Darwin Littlejohn
Defendant


Urs R. Gsteiger
Attorney for the Defendant


A. Root Edmonson
Deputy Counsel