

WAKE COUNTY
NORTH CAROLINA



18076

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
01 DHC 19

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
PHILLIP R. BATTEN, ATTORNEY)
Defendant)

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

This matter was heard on the 30th day of November, 2001, before a hearing committee of the Disciplinary Hearing Commission composed of Chair, Elizabeth Bunting, Kenneth M. Smith, and H. Dale Almond. G. Bryan Collins Jr. represented defendant, Phillip R. Batten. Douglas J. Bocker and Bobby D. White represented plaintiff, the North Carolina State Bar. 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, Phillip R. Batten, (hereafter "Batten"), was admitted to the North Carolina State Bar on August 23, 1991 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, Batten actively engaged in the practice of law in the city of North Wilkesboro, Wilkes County, North Carolina.
4. Batten was properly served with process and the hearing was held with due notice to all parties.

5. Batten was employed by the law firm of Vannoy, Colvard, Triplett & Vannoy P.L.L.C. (hereafter, "law firm") from approximately September 1, 1998 until August 12, 1999.

6. Batten was a salaried associate throughout his employment with the law firm.

7. Pursuant to the terms of his employment with the law firm, Batten was required to pay the law firm all fees paid to him during his employment by all clients for legal representation.

8. While employed by the law firm, Batten personally received and accepted cash fees from clients and did not pay or turn over these cash fees to the law firm.

9. For example, Batten agreed to represent Lonnie Britton on charges of driving while license revoked ("DWLR") and not using a seat belt, which were pending in Wilkes County District Court.

10. On or before February 4, 1999, Batten personally received and accepted a fee of \$300 in cash from Britton for representation on the DWLR and seat belt charges.

11. Additionally, Batten agreed to represent Jose Angel Perez-Limon (hereafter, "Mr. Perez") on a charge of Driving while Intoxicated ("DWI"), which was pending in Wilkes County District Court.

12. On or before April 8, 1999, Batten personally received and accepted a fee of \$500 in cash from Mr. Perez at the Wilkes County Courthouse.

13. Batten placed the \$500 cash in his briefcase and wrote Mr. Perez a receipt on a piece of yellow legal paper.

14. Finally, Batten agreed to represent Joseph Gilbert Mitchell on a charge of obtaining property by false pretenses, which was pending in Wilkes County District Court.

15. Sometime on or before June 2, 1999, Batten personally received and accepted \$150 in cash from Mr. Mitchell toward a fee to represent him on the false pretenses charge. Batten received the \$150 in cash from Mitchell at the Wilkes County Courthouse and wrote Mr. Mitchell a receipt on a piece of yellow legal paper.

16. Batten was a salaried associate of the law firm when he personally received and accepted the cash fees from Mr. Britton, Mr. Perez, and Mr. Mitchell.

17. Batten did not provide or turn over to the law firm or any employee or principal thereof any portion of the cash fees paid to him by Mr. Britton, Mr. Perez, and Mr. Mitchell.

18. Batten misappropriated the cash fees paid to him by Mr. Britton, Mr. Perez, and Mr. Mitchell.

19. After the law firm terminated his employment, Batten agreed to represent James Everette Crouse on a charge of discharge of a firearm into an occupied territory (hereafter, "firearm charge"), which was pending in Wilkes County District Court.

20. The firearm charge was set for a hearing in Wilkes County District Court on December 15, 1999.

21. Batten failed to notify Crouse about the December 15, 1999 hearing.

22. Crouse failed to appear at the December 15, 1999 hearing.

23. Batten represented to the Court that Crouse was unable to attend the hearing because he was snowbound in Michigan or another state, or words to that affect.

24. Crouse was not snowbound in Michigan or any other state on December 15, 1999.

25. Crouse did not attend the December 15, 1999 hearing because Batten failed to notify him about it.

26. When he made the representation to the Court on December 15, 1999, Batten knew Crouse was not snowbound in Michigan or any other state.

27. Batten knowingly made the false statement of material fact to the Court in an attempt to cover-up his failure to notify Crouse about the December 15, 1999 hearing.

28. Based on Batten's knowingly false representation, the Court continued the matter until January 5, 2000.

29. The Court directed Batten to have Crouse obtain a written excuse from his employer regarding the reason for his absence at the December 15, 1999 hearing and provide it to the Court by the next court date.

30. Prior to his appearance at the next court date on January 5, 2000, Batten instructed Crouse to compose a letter from his employer, to be submitted to the Court,

stating that Crouse was unable to attend the December 15, 1999 hearing because he was snowbound in Michigan.

31. When he instructed Crouse to compose a letter from his employer, to be submitted to the Court, stating that Crouse was unable to attend the December 15, 1999 hearing because he was snowbound in Michigan, Batten knew that such a statement and letter would be false.

32. Crouse refused to compose and submit such a letter to the Court because it was not true. Instead, Crouse submitted at his next court date on January 5, 2000, a notarized statement that he did not appear at the December 15, 1999 hearing because Batten failed to notify him of that court date.

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 Batten and the subject matter.

2. Batten'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) in that Batten committed the following violations of the Revised Rules of Professional Conduct (hereafter "Revised Rule"):

- (a) by misappropriating fees from clients that he was required to submit to the law firm, Batten engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Revised Rule 8.4(c);
- (b) by failing to notify Crouse about the December 15, 1999 hearing, Batten failed to keep his client reasonably informed about the status of the matter in violation of Revised Rule 1.4(a);
- (c) by representing to the Court that Crouse was unable to attend the hearing because he was snowbound in Michigan or another state, Batten:
 - (i) knowingly made a false statement of material fact to a tribunal in violation of Revised Rule 3.3(a)(1), and
 - (ii) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Revised Rule 8.4(c).

- (d) by instructing Crouse to compose a letter from his employer, to be submitted to the Court, stating that he was unable to attend the hearing on December 15, 1999 because he was snowbound in Michigan, Batten:
 - (i) counseled a witness to testify falsely or attempted to falsify evidence in violation of Revised Rules 3.4(b) and 8.4(a), and
 - (ii) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Revised Rule 8.4(c).

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. Batten's misconduct is aggravated by the following factors:
 - a. dishonest or selfish motive;
 - b. pattern of misconduct;
 - c. multiple offenses;
 - d. submission of false evidence during the disciplinary process; and
 - e. refusal to acknowledge wrongful conduct.
2. The defendant's misconduct is mitigated by no prior disciplinary offenses.
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. Defendant, Phillip R. Batten, is hereby suspended from the practice of law for three years beginning 30 days from service of this order upon him.

2. Batten 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. Batten shall pay the costs of this proceeding, including deposition costs, as assessed by the Secretary within 30 days of service of the costs upon him.

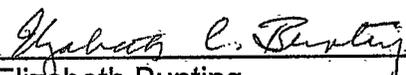
4. Batten shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules.

5. Prior to reinstatement, Batten shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules.

6. To be eligible for reinstatement at the end of the three-year period, Batten also must comply with all the following conditions during the entire period of his suspension:

- a) Batten shall not violate any federal or state law;
- b) Batten shall not violate any provisions of the Revised Rules of Professional Conduct or subsequently enacted Rules of the North Carolina State Bar;
- c) Batten shall satisfy the mandatory Continuing Legal Education requirements of the North Carolina State Bar during each year of the three-year suspension; and
- d) Batten shall make restitution to the law firm of Vannoy, Colvard, Triplett & Vannoy, P.L.L.C of the amounts he was found to have misappropriated from that firm in this proceeding, \$950.

Signed by the chair with the consent of the other hearing committee members, this the 20 day of December 2001.


Elizabeth Bunting
Hearing Committee Chair