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STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
02 CrS 23101

2002 DEC 30 PM 7:12
GUILFORD COUNTY O.S.C.

IN RE MARK FLOYD REYNOLDS, II
Attorney at Law

ORDER OF DISCIPLINE

This matter came on for hearing on December 2, 2002, before the undersigned judge presiding pursuant to an Order to Show Cause issued to Mark Floyd Reynolds, II. Mr. Reynolds appeared with counsel, Richard Tate. Present for the State Bar were Carolin Bakewell and Bobby White. The Court heard evidence and arguments of counsel.

Based on the record, the Court makes the following

FINDINGS OF FACT:

1. Mark Floyd Reynolds II (Mr. Reynolds) represented the plaintiffs in First National Pawn, Inc., et al. v. City of Greensboro, et al., 00 CvS 2711, filed in Guilford County Superior Court. Summary Judgment was entered against the plaintiff on or about December 4, 1991.
2. Mr. Reynolds filed Notice of Appeal on behalf of the plaintiffs on January 4, 2002. He thereafter served certain documents on counsel for the defendants but the materials so served did not comply with the requirements of the Rules of Appellate Procedure for a proposed Record on Appeal. Among other things, the materials served on defense counsel did not include an index, N.C.R.App.P. 9(a)(1)(a); a statement identifying the judge or order from which appeal was taken, N.C.R.App.P. 9(a)(1)(b); a copy of the summons, N.C.R.App.P. 9(a)(1)(c); or assignments of error, N.C.R.App.P. 9(a)(1)(k).
3. Mr. Reynolds thereafter received Joint Objections from the defendants in connection with the materials so served. Upon receipt of Defendants' Joint Objections, Mr. Reynolds took no action. At no time did Mr. Reynolds request judicial settlement of the Record on Appeal and he never filed a Record on Appeal with the North Carolina Court of Appeals. The defendants filed a Joint Motion to Dismiss Appeal for failure to comply with the Rules of Appellate Procedure.
4. The Joint Motion to Dismiss Appeal was heard by the Court on May 22, 2002. During the hearing on that motion, Mr. Reynolds was unable to cite any case, statute, rule, or other provision of law that authorized the approach he had taken to the Record on Appeal and in his argument did not refer to the Rules of Appellate Procedure. His argument was disjointed, almost incoherent, and showed a complete lack of preparation and no understanding of the Rules of Appellate Procedure. Mr. Reynolds twice informed the Court that he had never handled an appeal before the North Carolina Court of Appeals. In response

to a question from the Court, Mr. Reynolds stated, "Well, I'm not positive, because this is my first appeal, and I have not at any time prepared an appeal to the Court of Appeals of the State of North Carolina." Transcript at page 13. Later, he stated "I mean, I'm not trying to pull the wool over the eyes of the Court or anything. This is the first time that I have been to the Court of Appeals in this state." Transcript at page 18. The Motion to Dismiss the appeal was allowed.

5. In Garner v. Rentenbach Constructors, Inc., et al., 95 CvS 1497, filed in Guilford County Superior Court, Mr. Reynolds represented the plaintiff/appellant on appeal to the North Carolina Court of Appeals of decisions by the Superior Court. The Rules of Appellate Procedure make the appellant responsible for the Record on Appeal and Mr. Reynolds in that matter represented the appellant. No other lawyer is listed in the Record on Appeal or in the reported case as representing the plaintiff/appellant and there is no evidence before the Court that any other lawyer handled the preparation, settling, and filing of the Record on Appeal in that case. The case was decided by the Court of Appeals and is reported at 129 N.C.App. 624.¹ Nothing in the opinion of the Court indicates that there was any problem with the Record on Appeal.

6. Mr. Reynolds has offered no evidence to explain his misstatements to the Court concerning his previous experience in appellate matters. Other than his statements to the Court at the May 2002 hearing, there is no evidence before the Court explaining Mr. Reynolds' abject failure to follow the Rules of Appellate Procedure.

7. Mr. Reynolds' statement to the Court at the May 22 hearing that he had never handled an appeal before the North Carolina Court of Appeals was knowingly false. Mr. Reynolds first mentioned his lack of experience with appeals during his argument against the motion to dismiss the appeal, thus implicitly asking the Court to rely upon his statement. He second mentioned his lack of experience with appeals in response to the Court's stated concern over possible ethical violations on his part, thus asking the Court to take that into account in deciding whether to proceed with disciplinary proceedings. These misstatements were each material. Mr. Reynolds has not apologized to the Court for these misstatements.

8. The date Mr. Reynolds was admitted to practice law in this state is not in evidence, but it appears he has been practicing in this state for at least several years. There is no evidence of any prior disciplinary action having been taken against Mr. Reynolds and the Court will consider this fact in Mr. Reynolds' favor.

Based on these findings of fact, the Court CONCLUDES as a matter of law that:

1. In evaluating the evidence and imposing the requirements made herein, the Court is acting pursuant to its inherent authority and duty to discipline attorneys, to protect itself from impropriety, to protect the public, and to safeguard the administration of justice. See, e.g., In Re Hunoval, 294 N.C. 740, 744 (1977); State v. Spivey, 213 N.C. 45 (1938); In re Paul, 84 N.C.App. 491, 499-500, cert. denied, 319 NC 673 (1987), cert. denied, 484 US

¹ The case was thereafter heard by the North Carolina Supreme Court and that decision is reported at 350 NC 567.

1004 (1988). The Court's inherent power is not limited or bound by the technical precepts contained in the Rules of Professional Conduct. Swenson v. Thibaut, 39 N.C.App. 77, 109 (1978), cert. denied and appeal dismissed, 296 N.C. 740 (1979).

2. Mr. Reynolds failed to comply with clear requirements of the Rules of Appellate Procedure in connection with the appeal in National Pawn, Inc., et al. v. City of Greensboro. This failure was more than mere negligence. Mr. Reynolds did not make a technical error, miss a deadline by a day or two, or commit some other mistake in the nature of oversight or inadvertence; he rather showed a complete and total lack of knowledge about the rules and law governing appeals, even after those problems were pointed out by the defense in their Objections and in their Motion to Dismiss Appeal. While Mr. Reynolds did make some efforts, however inadequate, to perfect the appeal, a factor the Court has taken into account, the effect was the same as if he had done absolutely nothing

3. Mr. Reynolds violated his ethical duty to provide competent and diligent representation to his clients. Specifically, he did not undertake the preparation reasonably necessary for the appellate representation as required by Rule 1.1 of the Revised Rules of Professional Conduct and he did not act with reasonable diligence in connection with the appeal as required by Rule 1.3 of the Revised Rules of Professional Conduct.

4. By his statements at the May 22 hearing that he had never handled an appeal before the Court of Appeals, Mr. Reynolds violated Rule 3.3(a)(1) of the Revised Rules of Professional Conduct, Rule 12 of the General Rules of Practice, and his duty and obligation to be candid and honest with the Court. This obligation has deep historical roots:

Certainly since the time of Edward I, through all the vicissitudes of seven centuries of Anglo-American history, the legal profession has played a role all its own. The bar has not enjoyed prerogatives; it has been entrusted with anxious responsibilities. One does not have to inhale the self-adulatory bombast of after-dinner speeches to affirm that all the interests of man that are comprised under the constitutional guarantees given to "life, liberty and property" are in the professional keeping of lawyers. It is a fair characterization of the lawyer's responsibility in our society that he stands "as a shield," [citation omitted] in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as "moral character."

Schwartz v. Board of Bar Examiners, 77 S.Ct. 752, 760-761 (1957)((Frankfurter, J., concurring)(emphasis added); see also, G. Sharswood, Professional Ethics 168, 169 (1844)("From the very commencement of a lawyer's career, let him cultivate, above all things, truth, simplicity, and candor; they are the cardinal virtues of a lawyer."); Astles' Case, 594 A.2d 167, 170 (1991). A lawyer may not "use dishonorable means [or] subterfuge . . . in

order to confuse and mislead the court or the jury." State v. Mathis, 293 N.C. 660 (1977).
When a lawyer speaks, the words should be the truth. This obligation is fundamental.

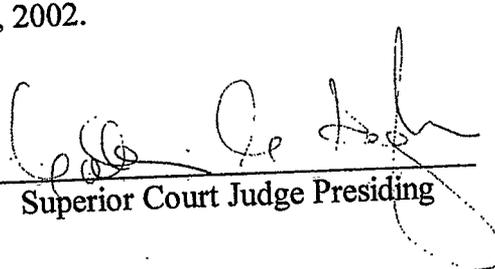
5. Mr. Reynolds' argument at the May 22 hearing was almost incoherent and virtually incomprehensible, giving rise to concerns that perhaps health issues played a role in Mr. Reynolds' misconduct.

6. The Court has evaluated other and lesser sanctions and/or disciplinary measures in light of all the evidence and finds in its discretion that lesser disciplinary measures would not be appropriate.

It is therefore ORDERED that:

1. Mark Floyd Reynolds is censured for violation of his ethical and professional duties. He is cautioned against undertaking to represent appellants in the future without additional education about and study of the Rules of Appellate Procedure and the cases interpreting and explaining those Rules. He is reminded of the importance of his duty to the Courts and the public to tell the truth.
2. No later than March 10, 2003, Mark Floyd Reynolds shall at his own expense submit to a mental health evaluation by a licensed mental health professional of his choosing approved by the State Bar. Mark Floyd Reynolds shall comply with any and all treatment recommendations of the professional. Mark Floyd Reynolds shall provide proof of compliance with these terms to the State Bar by March 28, 2003. He shall further make any and all of his records in connection with this evaluation and treatment available to the State Bar upon request. The Court retains jurisdiction to enter further orders in connection with this requirement, if necessary and appropriate, upon motion by either Mr. Reynolds or the State Bar.
3. The Clerk shall mail a copy of this Order to Mark Floyd Reynolds, Richard Tate, Bobby White, and Carolin Bakewell.

This 27 day of December, 2002.



Superior Court Judge Presiding