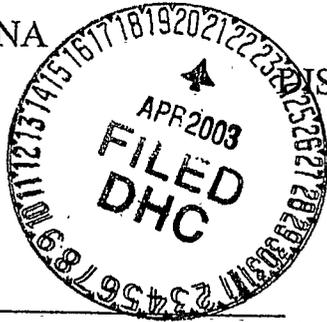


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NORTH CAROLINA

WAKE COUNTY



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

The North Carolina State Bar,
Plaintiff

v.

Paul E. Hemphill, Attorney,
Defendant

Consent Order of Discipline

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of Carlyn G. Poole, Chair; M. Ann Reed, and Betty Ann Knudsen pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, §.0114(h). The plaintiff was represented by David R. Johnson. The Defendant was represented by Linwood O. Foust. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Based upon the consent of the parties, the hearing committee hereby enters the following:

Findings of Fact

The Plaintiff, 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.

1. The Defendant, Paul E. Hemphill (hereafter Defendant), was admitted to the North Carolina State Bar in August 1975, and is, and was at all times referred to herein, except as otherwise set forth 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.

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2. During all or a portion of the relevant periods referred to herein, Defendant was actively engaged in the practice of law in the City of Charlotte, Mecklenburg County, North Carolina.

3. On or about 4 December 1989, Mary Youmans (hereafter "Youmans") engaged Defendant to represent her in an action for divorce and claims for alimony and equitable distribution. Youmans paid Defendant a fee of \$500 in advance plus court filing fees of \$45.

4. On 5 December 1989, Defendant filed a Complaint on behalf of Youmans for alimony *pendente lite* and equitable distribution in Mecklenburg County District Court file number 89 CVD 16363.

5. On or about 11 April 1990, a consent order was entered in the case requiring Youmans' husband to make certain payments to Youmans for the mortgage and utilities related to Youmans' residence pending final judgment in the alimony and equitable distribution action.

6. Following entry of the order, Youmans' husband did not comply with the order. Although enforcement proceedings against Youmans' husband were not expressly part of the initial employment agreement with Defendant, Defendant did agree to assist Youmans in enforcement of the order and eventually filed and appeared at hearings on as many as six separate motions for contempt against Youmans' husband on her behalf over the course of representation. However, on numerous occasions over the course of representation Defendant did not respond to Youmans' calls and letters expressing her concern about enforcement of these orders in a timely manner, did not timely prepare or file motions or pleadings with the court on her behalf; did not request hearings in a timely manner; and failed to inform Youmans about changes in court dates. Youmans did not pay Defendant any additional fees for filing the contempt motions or representation at the hearings on these motions.

7. On 23 January 1991, Defendant filed a Complaint for divorce on behalf of Youmans in Mecklenburg County District Court file number 91 CVD 1217. On 11 March 1991 a judgment of divorce between the Youmans was entered in the matter.

8. Over the course of representation, Youmans repeatedly requested Defendant to conclude the alimony and equitable distribution matter filed in 1989. Defendant failed to timely respond to Youmans or take action before the court to conclude the matter until directed by the court in May 1996 after Youmans had contacted the judge in the matter. A final judgment in the alimony and equitable

distribution action was entered on 11 July 1996. The Defendant was awarded \$1,000 in attorneys' fees payable by Youmans now former husband in that judgment.

9. Upon entry of the final judgment in the alimony and equitable distribution action, the matters for which Defendant had initially been retained were completed.

10. During the course of representation on the domestic matter, Youmans had severe financial problems. As a result, Youmans asked Defendant to file a Chapter 13 bankruptcy proceeding on her behalf. On or about 4 November 1994, Defendant filed the petition in the Western District of North Carolina, file number 94-31399. Defendant remained Youmans attorney of record in the Chapter 13 proceeding until her discharge from bankruptcy in December 1998.

11. On 19 March 1998, Youmans filed a request for fee arbitration with the 26th Judicial District Bar with regard to the fee paid for representation on the domestic matter at the initial meeting in December 1989 at which the Defendant was employed by Youmans.

12. The 26th Judicial District Bar conducted a fee arbitration hearing in November 1998. The Defendant participated in the proceeding. The fee arbitration panel awarded Youmans a refund of \$295 of the fee previously paid. The decision was communicated to Defendant and Youmans on or about 23 December 1998.

13. Defendant did not pay the award from the fee arbitration hearing to Youmans until December 1999 after Youmans had made several inquiries to the Bar on which Defendant was copied and an attorney had contacted Defendant on behalf of Youmans by letter dated 8 October 1999.

14. On 19 March 1998, Youmans also filed a grievance against the Defendant with the 26th Judicial District Bar. The 26th Judicial District Bar deferred investigation of the grievance until the conclusion of the fee arbitration proceeding.

15. On 8 January 1999, the Chairman of the Grievance Committee of the 26th Judicial District Bar notified Defendant that an investigation Youmans' grievance had been initiated. The Defendant was directed to provide a written response to Youmans allegations within 15 days. The Defendant did not respond.

16. On 19 April 1999, an investigating attorney for the Grievance Committee sent Defendant a follow-up letter asking for a response by certified mail, return receipt requested. The US Postal Service returned the letter as "unclaimed."

17. On or about 15 November 1999, the investigating attorney for the Grievance Committee sent another letter to Defendant asking for a response. This letter was sent by fax, regular mail, and certified mail to two different addresses believed to be maintained by the Defendant.

18. On 1 December 1999, the Defendant accepted delivery of one of the 15 November 1999 certified letters. Defendant did not respond to the investigating attorney or the 26th Judicial District Bar in any manner.

19. Defendant has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline with the advice of counsel. Defendant understands that the terms of this consent order of discipline are subject to the approval of the hearing committee. Upon acceptance of this consent order of discipline by the hearing committee, Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

Based upon the consent of the parties and the foregoing stipulated 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 the Defendant and the subject matter of this proceeding.

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

- a. By failing to promptly prepare and file court pleadings and otherwise present Youmans' contempt and alimony and equitable distribution case in court on a timely basis, Defendant failed to act with reasonable diligence and promptness in violation of Rule 6(b)(3) of the Superseded Rules of Professional Conduct and Rule 1.3 of the Revised Rules of Professional Conduct.
- b. By failing to respond to Youmans' inquiries concerning the status of her cases and by failing to notify her concerning scheduled court dates, Defendant failed to keep his client reasonably informed about the status of her case or promptly comply with his client's requests for information in violation of Rule 6(b)(1) of the

Superceded Rules of Professional Conduct and Rule 1.4(a) of the Revised Rules of Professional Conduct.

- c. By failing to pay Youmans the award of the fee arbitration committee of the 26th Judicial District Bar for nearly one year after its entry, Defendant failed to participate in good faith with the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f)(2) of the Revised Rules of Professional Conduct.
- d. By failing to respond to the multiple communications from the Grievance Committee of the 26th Judicial District Bar concerning the grievance filed by Youmans, the Defendant failed to respond to the lawful inquiries of a disciplinary authority in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct.

Upon the consent of the parties, the hearing committee also enters the following:

Findings Of Fact Regarding Discipline

1. On 17 July 1997, the Defendant received an Admonition from the Grievance Committee for neglect of a client's case, failure to adequately communicate with the client, and failure to respond to the inquiries of the bar in violation of Rules 6(b)(3), 6(b)(1), and 1.1(b) of the [now superceded] Rules of Professional Conduct.
2. On 16 April 1998, the Defendant received a Reprimand from the Grievance Committee in two separate grievances involving neglect of a client and failure to adequately communicate with the client in both instances and failure to respond to the bar in one grievance in violation of Rules 6(b)(1), (2), and (3) and 1.1(b) of the [now superceded] Rules of Professional Conduct.
3. On 15 October 1998, the Defendant received a Censure from the Grievance Committee for failing to respond to the bar for more than four months after receiving notice of a grievance until a subpoena was issued to compel a response in violation of Rules 8.1(b) and 8.4(d) of the Revised Rules of Professional Conduct.
4. The prior discipline issued by the Grievance Committee was for conduct similar to the conduct involved in the instant proceeding.

5. The prior discipline issued by the Grievance Committee involved conduct that occurred during the same time period as the conduct involved in the instant proceeding.

6. The Defendant has personal stresses that have made it difficult for him to attend to his professional obligations and respond to the Bar in a prompt manner. Defendant has sought the assistance of the Lawyers Assistance Program to help him overcome these stresses and is fully cooperating and complying with the program.

7. Defendant received no additional attorneys' fees from Ms. Youmans for his work on her behalf and had to forego or refund substantial portions of those amounts Youmans had paid or agreed to pay.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the hearing committee makes the following:

Conclusions With Respect To Discipline

1. The Defendant's misconduct is aggravated by the following factors:
 - a. prior disciplinary offenses similar in nature to those involved in the instant proceeding;
 - b. a pattern of misconduct;
 - c. a failure to respond; and
 - d. multiple offenses.
2. The Defendant's misconduct is mitigated by the following factors:
 - a. absence of a dishonest or selfish motive;
 - b. voluntary participation in the Lawyers Assistance Program; and
 - c. personal problems.
3. The aggravating factors outweigh the mitigating factors.
4. The Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients and the ability of the profession to deal with attorney misconduct.
5. The Defendant's continued failure to respond to his client and the Bar after receiving prior discipline indicates an indifference to discipline of less than a suspension and clearly shows that the protection of the public and the protection

requires the imposition of discipline with the potential for an active suspension of Defendant's license to practice.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the hearing committee enters the following:

Order Of Discipline

1. The Defendant, Paul Hemphill, is hereby suspended from the practice of law for one year, effective 30 days from service of this order upon Defendant.
2. The one-year suspension is stayed for a period of two years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:
 - a. Defendant will, within 30 days of the effective date of this Order of Discipline, continue to satisfactorily participate in the Lawyers Assistance Program as long as recommended by the Program during the stay of the suspension;
 - b. By consent to this order, Defendant consents to, authorizes, and directs the Lawyer Assistance Program to provide an immediate report to the North Carolina State Bar if, at any time during the stay period, Defendant fails to comply with the prescribed course of treatment of the program. Further, by consent to this order, Defendant consents to, authorizes, and directs the Lawyer Assistance Program to provide a final report to the North Carolina State Bar if, at any time during the stay period, Defendant completes the prescribed course of treatment and is released from care. A copy of this order will be provided to the Lawyer Assistance Program by Plaintiff upon execution;
 - c. During the period of the stay, Defendant will pay all Membership dues and Client Security Fund assessments and will comply with all Continuing Legal Education requirements on a timely basis;
 - d. During the period of the stay, Defendant will keep his address of record with the North Carolina State Bar current, will accept all certified mail from the North Carolina State Bar, and will respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;

- e. Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- f. Defendant will not violate any laws of the State of North Carolina or of the United States during the period of the stay; and
- g. Defendant will pay all costs of this proceeding as assessed by the Secretary within 30 days after service of this disciplinary order on him.

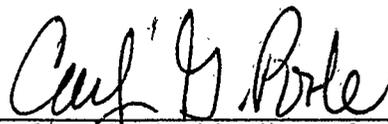
3. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant will comply with each of the following conditions precedent to reinstatement.

- a. Defendant will have submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;
- b. Defendant will have complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;
- c. Defendant will have complied with all Continuing Legal Education requirements as if still in practice during the suspension on a timely basis;
- d. Defendant will not have violated any of the Revised Rules of Professional Conduct;
- e. Defendant will not have violated any laws of the State of North Carolina or of the United States;
- f. Defendant will have paid all costs of this proceeding as assessed by the Secretary; and

g. Defendant will show that he is not then suffering from any disability that would impair his ability to practice law.

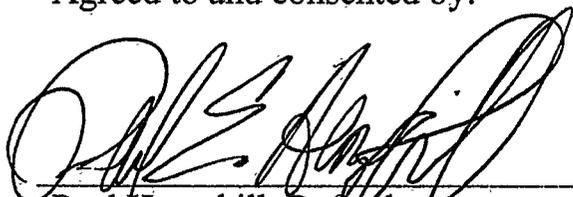
Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 16 day of April 2003.

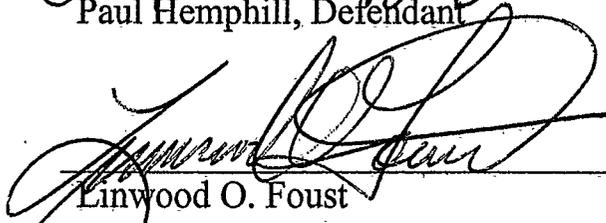


Carlyn G. Poole, Chair
Disciplinary Hearing Committee

Agreed to and consented by:



Paul Hemphill, Defendant



Linwood O. Foust
Attorney for Defendant, Paul Hemphill



David R. Johnson
Attorney for Plaintiff, N.C. State Bar