

23917

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 7

THE NORTH CAROLINA STATE BAR)
Plaintiff)

v.)

JOHN W. WELLMAN, ATTORNEY)
Defendant)

CONSENT ORDER
OF
DISCIPLINE

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of Carlyn G. Poole, Esq., Chair; M. Ann Reed, Esq.; and Lorraine Stephens, pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B Section .0114 (h) of the Rules and Regulations of the North Carolina State Bar. The defendant John W. Wellman, was represented by Alan M. Schneider. The plaintiff was represented by Thomas F. Moffitt. Defendant has agreed to waive a formal hearing in the above referenced matter. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Further, the Defendant hereby waives his right to appeal this consent order or challenge in any way the sufficiency of the findings. Based upon the consent of the parties the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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.

2. The Defendant John W. Wellman was admitted to the North Carolina State Bar in 1997, 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 of the relevant periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Asheville, North Carolina.

4. Lisa Duncan paid Defendant Wellman \$500 to represent her in a patent or copyright matter and to find a company to develop or market her idea.
5. Duncan received a patent pending number in February 2000.
6. In September 2000, Defendant told Duncan he found a company that was interested in her idea and needed to meet with her to discuss the matter.
7. Defendant scheduled three meetings with Duncan but failed to attend any of them.
8. Duncan repeatedly telephoned Defendant about the status of her case but always got his answering machine instead. Defendant did not return Duncan's calls and did not keep her informed about the status of her case.
9. Finally, Duncan left a phone message in which she demanded that Defendant return her file and refund the \$500 she had paid him. Defendant neither returned the file nor refunded the fee.
10. Defendant did not handle Duncan's case with reasonable diligence or promptness and did not earn the \$500 fee Duncan paid him.
11. In June 2000, Christine Halvorsen paid Defendant Wellman \$135 to represent her in a consumer dispute with a furniture company.
12. Halvorsen repeatedly telephoned Defendant to obtain information about the status of her case. However, Defendant did not return her calls or otherwise keep her informed about the status of the legal matter for which she hired him.
13. On September 13, 2000, Halvorsen wrote Defendant a letter in which she fired him as her attorney and demanded that he return the documents she had given him regarding her claim against the furniture company.
14. Defendant did not respond to Halvorsen's September 13, 2000 letter or return her documents.
15. Defendant did not handle Halvorsen's case with reasonable diligence and promptness and did not earn the \$135 attorney fee paid to him.
16. Faye Barwick hired Defendant Wellman to represent her in a divorce and equitable distribution action.
17. On June 26, 2000, Defendant withdrew as Barwick's attorney of record.
18. After Defendant withdrew from the case, Barwick hired another attorney, Ralph Pennington, to represent her in the domestic action.

19. Barwick repeatedly tried to retrieve her file and materials from Defendant in order to give them to Pennington, who needed them for an impending show cause hearing in the matter. Barwick left several phone messages demanding that Defendant return her file but Defendant did not return her calls.

20. On September 6, 2000, Pennington wrote Defendant a letter in which he asked Defendant to send him Barwick's materials because he needed them to prepare for the upcoming show cause hearing. However, Defendant did not return Barwick's materials before the hearing was held, although he eventually did send her file to Pennington.

21. John Blake paid Defendant Wellman \$200 to prepare a deed for property located in Florida.

22. Blake repeatedly telephoned Defendant about the status of the preparation of the deed, but Defendant did not return his telephone calls or prepare the deed.

23. Defendant did not earn the \$200.00 attorney fee or refund the unearned fee to Blake.

24. In October 2000, John Blake filed a grievance against Defendant Wellman with the 28th Judicial District Bar Grievance Committee ("local grievance committee").

25. The local grievance committee sent a letter, dated October 20, 2000, to Defendant at his office address. The letter asked him to respond to Blake's grievance within 15 days of his (Defendant's) receipt of the grievance. Defendant did not respond to the letter.

26. On November 13, 2000, the local grievance committee sent the grievance letter to Defendant at his home address and asked him to respond to it. However, Defendant again failed to respond to Blake's grievance.

27. The above referenced conduct occurred during a period of time in which the Defendant was experiencing significant personal problems in his life and was suffering from depression.

28. The above referenced conduct was a direct result of the Defendant's depression for which he has since received psychiatric treatment and counseling.

29. The Defendant is currently practicing law in the State of Florida and has entered into a contract with the Florida Lawyer's Assistance Program.

30. The Defendant has made excellent progress in addressing the personal problems he was experiencing during the time period in which the conduct at issue occurred.

31. According to Defendant's psychiatrist, Steven R. Machlin, M.D., the Defendant is doing excellent on a combination of psychotherapy and medication. Dr. Machlin reports that the Defendant has excellent intelligence, insight, judgment, is quite compliant with treatment and continues in treatment.

32. Defendant has agreed to make financial restitution to repay the fees he collected from Duncan (\$500.00), Halvorsen (\$135.00) and Blake (\$200.00) and to participate in the Florida Bar's lawyer assistance program during the two year stay period, to wit: until July 30, 2005.

Based upon the foregoing Findings of Fact, the Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over defendant, John W. Wellman, and the subject matter of this proceeding.
2. The Defendant'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) as follows:
 - (a) By not acting with reasonable diligence and promptness in representing his clients as alleged in the State Bar's complaint, the Defendant neglected his clients' cases, in violation of Rule 1.3 of the Revised Rules of Professional Conduct.
 - (b) By failing to keep his clients reasonably informed about the status of their cases and to promptly comply with reasonable requests for information as alleged in the State Bar's complaint, the Defendant violated Rule 1.4(a) of the Revised Rules of Professional Conduct.
 - (c) By failing to return his clients' files as alleged in the State Bar's complaint, Defendant violated Rule 1.16 (d) of the Revised Rules of Professional Conduct.
 - (d) By failing to refund the unearned attorney fees in the Duncan, Blake and Halvorsen matters, the Defendant violated Rule 1.16 (d) of the Revised Rules of Professional Conduct.
 - (e) By failing to respond to the local grievance committee's request for information, the Defendant violated Rule 8.1(b) of the Revised Rules of Professional Conduct.

Based upon the consent of the parties, the hearing committee also enters the following:

FINDINGS REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factor:
 - (a) multiple offenses.

2. The Defendant's misconduct is mitigated by the following factors:
 - (a) absence of any prior disciplinary record
 - (b) absence of a dishonest or selfish motive
 - (c) The Defendant suffered from significant personal problems during the time period in which the violations occurred and has actively and successfully sought treatment and counseling to address these problems
 - (d) efforts to rectify the consequences of his misconduct
 - (e) full and free disclosure to the North Carolina State Bar and cooperative attitude toward the proceedings
 - (f) remorse
 - (g) interim rehabilitation; and
 - (h) The conduct in question occurred more than two and a half years ago.
3. The mitigating factors significantly outweigh the aggravating factor.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW and the FINDINGS REGARDING DISCIPLINE and based upon the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The license of the defendant, John W. Wellman, is hereby suspended for one year from the date this Order of Discipline is served upon him. The period of suspension is stayed for two years upon the following conditions:
 - a. The Defendant shall participate in the Florida Bar's lawyer assistance program during the two-year stay period, to wit: until July 30, 2005.
 - b. The Defendant shall, at his own expense, continue counseling and treatment by a medical provider approved by the Office of Counsel of the North Carolina State Bar and shall comply with the course of treatment prescribed by the medical care provider for the next two years or until the defendant is released from treatment, whichever first occurs
 - c. The Defendant shall be responsible for ensuring that a written report is received in the Office of Counsel from his medical care provider on October 1, 2003, Jan. 1, 2004, April 1, 2004, July 1, 2004, October 1, 2004, Jan. 1, 2005, April 1, 2005 and July 1, 2005. Such report shall indicate whether defendant is following his treatment plan and whether he is currently able to engage in the active practice of law.
 - d. Within 30 days of service of this Consent Order of Discipline, the Defendant shall provide the Office of Counsel with a written release, authorizing the

Office of Counsel to contact the Defendant's medical care provider for the purpose of determining whether Defendant is following his treatment plan and is able to engage in the practice of law. The Defendant shall not revoke this written release prior to July 30, 2005

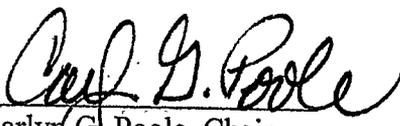
- e. Within 30 days of service of this Consent Order of Discipline, Defendant shall provide evidence to the Office of Counsel that he has made restitution to Duncan (\$500.00), Halvorsen (\$135.00) and Blake (\$200.00).
- f. During the period of the stay, Defendant will keep his address of record with 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.
- g. The Defendant shall not violate any state or federal laws during the period of the stayed suspension.
- h. The Defendant shall not violate any provisions of the Rules of Professional Conduct during the period of his stayed suspension; and
- i. The Defendant shall pay all costs incurred in this proceeding, as assessed by the Secretary, within 30 days of service of the notice of costs upon him.

2. If, upon a motion by the State Bar, a Hearing Committee of the DHC finds that the Defendant has violated any of the conditions in Section 1(a)-(h) of this Order of Discipline, the suspension of the defendant's license shall be activated. If the suspension is activated, prior to seeking reinstatement of his license, the Defendant must:

- a. comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, Sec. .0125(b) of the N.C. State Bar Discipline & Disability Rules; and
- b. satisfy all the conditions set forth in section 1 (a)-(h) of this Order of Discipline prior to seeking reinstatement.

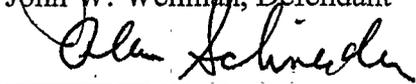
Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee.

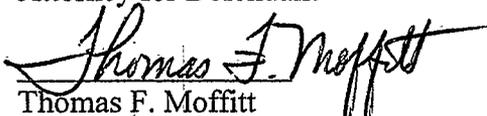
This the 8 day of July, 2003


Carlyn G. Poole, Chair
Hearing Committee

We Consent:


John W. Wellman, Defendant


Alan M. Schneider
Attorney for Defendant


Thomas F. Moffitt
Attorney for Plaintiff