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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 17

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
ANN F. LOFLIN, Attorney,)
Defendant)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

On March 26, 2004, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; Stephen E. Culbreth, and R. Mitchel Tyler. A. Root Edmonson represented the North Carolina State Bar and the Defendant did not appear and was not represented by counsel. Based upon the facts alleged in the Complaint that are deemed admitted by the Defendant's default, the hearing committee finds the following has been established by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The North Carolina State Bar (hereafter "Plaintiff"), 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, Ann F. Loflin, (hereafter "Loflin"), was admitted to the North Carolina State Bar on August 14, 1971 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 periods referred to herein, Loflin was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Durham, Durham County, North Carolina.
4. On November 14, 2003, a deputy from the Durham County Sheriff's Office served Loflin with the Complaint in this matter. On the same day, Loflin also signed the Acceptance of Service contained on the Summons before a notary.
5. Loflin has failed to file an Answer or other pleading in this matter.

6. The Disciplinary Hearing Commission has jurisdiction of the subject matter of this proceeding and of Loflin.

7. On July 6, 1999, Gabriel J. Brown (hereinafter "Brown") was indicted in Durham County Superior Court for Robbery with a Dangerous Weapon. Brown was also charged with felonious Possession of Stolen Goods, a 1995 Nissan Sentra.

8. Loflin was appointed to represent Brown, and represented Brown in a jury trial of the Robbery with a Dangerous Weapon charge, file number 99 CRS 62923.

9. On March 3, 2000, the jury returned a verdict of guilty on the charge of Robbery with a Dangerous Weapon. The State dismissed the Possession of Stolen Goods charge.

10. On March 3, 2000, Superior Court Judge Howard E. Manning, Jr. sentenced Brown to a minimum of 66 months and a maximum of 89 months in the NC Department of Corrections.

11. On March 29, 2000, Judge Manning appointed Loflin to perfect an appeal of Brown's conviction.

12. On June 29, 2000, the court reporter for the Brown trial, Martha Criste, certified that she had delivered to Loflin a copy of the transcript of Brown's trial for her use in perfecting Brown's appeal.

13. Loflin failed to perfect an appeal for Brown and failed to communicate with Brown about his appeal.

14. On August 8, 2001, Brown filed a grievance against Loflin with the North Carolina State Bar.

15. On August 29, 2001, the State Bar served Loflin by certified mail with a letter of notice regarding Brown's grievance.

16. Loflin failed to respond to the letter of notice within 15 days as required by Rule .0112(c) of the Discipline and Disability Rules of the North Carolina State Bar.

17. On October 3, 2001, the State Bar sent Loflin a follow-up letter regarding Brown's grievance by regular mail. That letter instructed her to respond to Brown's grievance no later than October 15, 2001.

18. Loflin also failed to respond to the October 3 letter.

19. On October 29, 2001, as a result of her failure to respond, the State Bar issued Loflin a subpoena to appear at the State Bar offices on November 15, 2001 to respond to the Brown grievance.

20. The subpoena was served on Loflin by certified mail on October 30, 2001.
21. Loflin failed to appear on November 15, 2001 or otherwise respond to the Brown grievance.
22. On November 19, 2001, the State Bar issued Loflin a second subpoena to appear at the State Bar offices on December 20, 2001 to respond to the Brown grievance.
23. The second subpoena was served on Loflin by certified mail on November 21, 2001.
24. Loflin failed to appear on December 20, 2001 or otherwise respond to the Brown grievance.
25. On March 18, 2002, based on Loflin's failure to respond or appear, the State Bar issued Loflin a third subpoena to appear before the Grievance Committee at its meeting on April 17th, 2002.
26. The third subpoena was served on Loflin by certified mail on March 20, 2002.
27. Loflin failed to appear before the Grievance Committee at its April 17, 2002 meeting or otherwise respond to the Brown grievance.
28. On February 18, 1998, Mario Taylor (hereinafter, Taylor) was arrested in Durham County. Taylor was subsequently indicted on a charge of Robbery with a Dangerous Weapon and multiple charges of Kidnapping.
29. Loflin was appointed to represent Taylor, and represented Taylor in a jury trial of the Robbery with a Dangerous Weapon charge, file number 98 CRS 6658, and several kidnapping charges in files numbered 98 CRS 6659-71.
30. On July 14, 1999, the jury returned verdicts of guilty on the Robbery with a Dangerous Weapon charge in 98 CRS 6658 and 10 counts of second-degree kidnapping.
31. On July 14, 1999, Superior Court Judge Donald Jacobs sentenced Taylor to a minimum of 120 months and a maximum of 153 months in the NC Department of Corrections in 98 CRS 6658, 92-110 months to run consecutively in 98 CRS 6670, 92-110 months to run consecutively in 98 CRS 6671 and 92-110 months to run concurrently in the other cases.
32. On July 14, 1999, Judge Jacobs appointed Loflin to perfect an appeal of Taylor's conviction.
33. On September 13, 1999, the court reporter for the Taylor trial certified that she had delivered to Loflin a copy of the transcript of Taylor's trial for her use in perfecting Taylor's appeal.

34. Loflin failed to perfect an appeal for Taylor and failed to communicate with Taylor when he sought information about his appeal and copies of documents from his file for his use in seeking post-conviction relief.

35. On February 5, 2003, Taylor filed a grievance against Loflin with the North Carolina State Bar.

36. On March 5, 2003, the State Bar served Loflin by certified mail with a letter of notice regarding Taylor's grievance.

37. Loflin failed to respond to the letter of notice within 15 days as required by Rule .0112(c) of the Discipline and Disability Rules of the North Carolina State Bar.

38. On March 24, 2003, the State Bar sent Loflin a follow-up letter regarding Taylor's grievance by regular mail. That letter instructed her to respond to Taylor's grievance no later than April 1, 2003.

39. Loflin also failed to respond to the March 24, 2003 letter.

40. On April 15, 2003, as a result of her failure to respond, the State Bar issued Loflin a subpoena to appear at the State Bar offices on April 29, 2003 to respond to the Taylor grievance.

41. The subpoena was served on Loflin by certified mail on April 17, 2003.

42. Loflin failed to appear on April 29, 2003 or otherwise respond to the Taylor grievance.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Loflin and the subject matter.

2. Loflin's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) and §84-28(b)(3) as follows:

- (a) by failing to act with reasonable diligence and promptness in representing Brown by failing to perfect Brown's appeal, Loflin violated Rule 6(b)(3);
- (b) by failing to keep her client, Brown, reasonably informed about the status of his appeal, Loflin violated Rule 6(b)(1);

- (c) by failing to act with reasonable diligence and promptness in representing Taylor by failing to perfect Taylor's appeal, Loflin violated Rule 6(b)(3);
- (d) by failing to respond to her client, Taylor, when he sought copies of documents from his file, Loflin violated Rule 1.16(d);
- (e) by failing to respond to each of the State Bar's efforts to get a response from her concerning the Brown and Taylor grievances, Loflin knowingly failed to respond to lawful demands for information from a disciplinary authority, in violation of Revised Rule 8.1(b) and failed to answer formal inquiries issued by the North Carolina State Bar in violation of NCGS §84-28(b)(3).

BASED UPON the foregoing Findings of Fact, the Conclusions of Law, and the evidence presented at the hearing, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Loflin's misconduct is aggravated by the following factors:
 - (a) prior discipline; and
 - (b) multiple offenses.
2. Loflin's misconduct is mitigated by the following factor:
 - (a) absence of a dishonest or selfish motive.
3. An order calling for discipline short of a suspension of Loflin's license, with appropriate conditions precedent for reinstatement, would not sufficiently protect the public for the following reasons:
 - (a) Loflin failed to respond to any of the eight attempts the State Bar made to get her to respond to the allegations made by her clients in these matters when they were pending before the Grievance Committee, including ignoring four subpoenas.
 - (b) Loflin also failed to answer the allegations after they were brought in the Disciplinary Hearing Commission. This is so even though she was personally served with the Complaint in this matter and signed an acknowledgement that she had been served before a notary public.
 - (c) If Loflin is unwilling or unable to respond to formal requests in her professional matters as required by the rules of her profession, it

raises the question of whether Loflin is willing and able to handle her clients' legal matters.

- (d) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of Loflin's failure to attend to her professional obligations.
- (e) The protection of the public requires that Loflin not be permitted to resume the practice of law until she demonstrates that she understands her obligations to her clients and her profession and that she demonstrates that she is not suffering from any physical or mental condition that prevents her from practicing law competently.

BASED UPON the foregoing Findings of Fact Regarding Discipline and the arguments of counsel, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The license of the Defendant, Ann F. Loflin, is hereby suspended for three years, effective 30 days after the date that this order is served upon her.

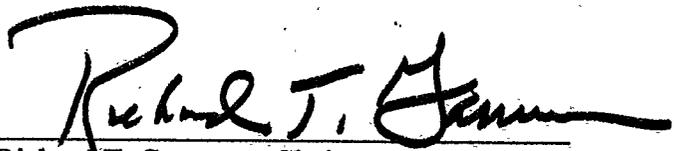
2. All but six months of Loflin's three-year suspension may be stayed upon Loflin proving that she has satisfied the following conditions:

- a) She obtained a physical and mental examination by a psychiatrist approved by the N.C. State Bar within 6 months of seeking reinstatement and complied with all treatment recommendations of the psychiatrist during the period of suspension of her law license. The evaluation shall be obtained at Loflin's expense.
- b) The psychiatrist has submitted a written report to the N.C. State Bar confirming that Loflin is not suffering from a mental or physical condition that substantially impairs her judgment or competence as an attorney.
- c) She executed a written release authorizing the Office of Counsel of the N.C. State Bar to contact the psychiatrist who performed the evaluation and to obtain copies of her medical records relating to her evaluation and treatment from the psychiatrist and all other treating medical personnel.
- d) She has responded to all communications from the N.C. State Bar within 30 days of receipt or the deadline stated in the communication, whichever is earlier.

- e) She has not violated the Revised Rules of Professional Conduct or the laws of any state or of the United States.
- f) She properly wound down her law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0124 of the State Bar Discipline & Disbarment Rules.
- g) She has paid all past due membership fees owed to the N.C. State Bar, and has complied with all mandatory continuing legal education requirements.
- h) She has paid the costs of this proceeding as assessed by the Secretary of the N.C. State Bar.

3. If Loflin does not seek a stay of any portion of her suspension, then Loflin must comply with all of the conditions contained in subparagraphs 2(a)-(h) above as a condition of filing a petition for reinstatement of her license.

Signed by the chair with the consent of the other hearing committee members, this the 6th day of April, 2004.



Richard T. Gammon, Chair
Hearing Committee

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