

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 14

THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	CONSENT
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW
)	AND ORDER OF DISCIPLINE
B. ERVIN BROWN, II, Attorney,)	
Defendant)	

This matter comes before a hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, John M. May, and Lorraine Stephens upon the consent of the parties as to the findings, conclusions and discipline to be imposed. A. Root Edmonson represents the North Carolina State Bar and David B. Freedman represents the Defendant. Based upon the consent of the parties, the hearing committee makes 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, B. Ervin Brown, II (hereinafter, "Brown"), 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 the times relevant to this complaint, Brown actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Winston-Salem, Forsyth County, North Carolina.
4. On February 19, 1999, Joseph Singletary (hereinafter, Singletary) filed a *pro se* complaint in state court against his former employer, MGM Transport Corporation (hereinafter, MGM), alleging disability discrimination.
5. MGM removed Singletary's case to the United States District Court for the Middle District of North Carolina.

6. On March 22, 1999, MGM filed a motion to dismiss with a supporting memorandum.
7. On April 5, 1999, through his attorney, Todd Cline (hereinafter, Cline), Singletary filed a motion to amend his complaint.
8. On April 22, 1999, Cline filed a response to MGM's motion to dismiss.
9. On May 10, 1999 MGM filed a motion to disqualify Cline from further representation of Singletary.
10. On June 14, 1999, Cline filed a motion to withdraw.
11. On June 17, 1999, Magistrate Judge Russell A. Eliason (hereinafter, Eliason) granted Cline's motion to withdraw and directed Singletary to have other counsel enter notice of appearance or enter notice of his *pro se* appearance within 20 days.
12. On August 11, 1999, Eliason recommended that Singletary's complaint be dismissed for Singletary's failure to file a notice of appearance or have new counsel file one on his behalf.
13. Singletary filed an undated request for an extension of time to employ counsel.
14. On September 10, 1999, Eliason gave Singletary until September 28, 1999 to have counsel enter an appearance for him or to file a notice of *pro se* appearance.
15. On September 21, 1999, Singletary retained Brown to represent him in the matter and paid Brown \$1,500.00 as a retainer.
16. On September 27, 1999, Brown filed a notice of appearance and a request for the magistrate judge to withdraw his recommendation dated June 17, 1999.
17. On October 6, 1999, Eliason vacated his recommendation of dismissal, denied MGM's motion to dismiss, denied the motion to amend that Cline filed on Singletary's behalf, and gave Singletary 20 days to file an amended complaint.
18. Pursuant to the retainer agreement, it was Brown's obligation to file the amended complaint on Singletary's behalf within the time allowed.
19. Brown failed to file an amended complaint on Singletary's behalf within the time allowed.
20. On November 11, 1999, counsel for MGM mailed Brown a motion to dismiss Singletary's original complaint due to Singletary's failure to amend the original complaint and a memorandum supporting the motion. MGM's motion and memorandum were filed on November 15, 1999.

21. Brown asked his associate, James S. Gibbs, Jr. (hereinafter, Gibbs) to prepare a memorandum in opposition to the motion to dismiss.

22. Brown prepared a motion for leave to file an amended complaint and an amended complaint.

23. On December 17, 1999, Brown filed his motion, the amended complaint and Gibbs' memorandum in the federal court on Singletary's behalf.

24. On July 20, 2000, Judge N. Carlton Tilley, Jr., Chief Judge of the United States District Court for the Middle District of North Carolina (hereinafter, Tilley), denied Brown's untimely motion to amend made on Singletary's behalf, granted MGM's motion to dismiss and entered judgment for MGM.

25. After July 20, 2000, Singletary attempted to call Brown several times, each time leaving messages for Brown to return his call.

26. Although Brown knew that Tilley had dismissed Singletary's case and that he had a duty to tell Singletary that it had been dismissed, Brown attempted to delegate that duty to someone else.

27. Even after learning that nobody else had called Singletary to inform him of Tilley's decision, Brown did not call Singletary.

28. In October 2001, Singletary left Brown a message advising Brown that, if Brown didn't call Singletary, Singletary would file a complaint with the State Bar.

29. Brown scheduled an appointment to meet with Singletary on November 1, 2001.

30. At the November 1, 2001 meeting, Brown told Singletary for the first time that his case had been dismissed.

31. Based upon the sworn statements of Singletary and Brown at depositions taken in the case, there is not clear and convincing evidence that Brown made false statements to Singletary in the November 1, 2001 meeting as alleged in the Complaint.

32. The evidence is not clear and convincing that Brown was the cause of any misleading communication made in his firm's 2002 listing in the Martindale-Hubbell legal directory as alleged in the Second Claim for Relief in the Complaint in this matter.

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 Brown and the subject matter.
2. Brown'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 file an amended complaint on Singletary's behalf within the time allowed by Eliason, Brown failed to act with reasonable diligence and promptness in representing Singletary in violation of Rule 1.3;
 - (b) By failing to timely inform Singletary that his case had been dismissed, Brown failed to explain a matter to the extent reasonably necessary to permit Singletary to make informed decisions about the representation in violation of Rule 1.4(b);
 - (c) By failing to return Singletary's calls seeking an update of the status of his matter, Brown failed to keep Singletary reasonably informed about the status of his matter and promptly comply with reasonable requests for information in violation of Rule 1.4(a).

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. Brown's misconduct is aggravated by the following factors:
 - (a) Prior discipline, including a Censure issued by the Disciplinary Hearing Commission in 00 DHC 11 and a Reprimand issued by Superior Court Judge Catherine C. Eagles in April 2001; and
 - (b) Substantial experience in the practice of law.
2. Brown's misconduct is mitigated by the following factor:
 - (a) Absence of a dishonest or selfish motive;
 - (b) Brown reimbursed the \$1,500.00 legal fee that Singletary paid him with interest;
 - (c) Brown was prepared to present evidence at the hearing of his good character and his reputation for truthfulness from a number of respected members of the Bar.

3. The mitigating factors outweigh the aggravating factors. Although Brown has been disciplined twice before, there is no evidence that Brown has ignored the lessons from the prior discipline since his conduct in this matter is so dissimilar to the conduct for which he was previously disciplined.

4. Because Singletary lost his opportunity to pursue his claim against MGM in federal court, Brown's conduct caused significant harm to Singletary, but the protection of the public doesn't require a suspension of Brown's license.

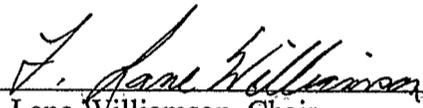
BASED UPON the foregoing Findings of Fact Regarding Discipline and the consent of the parties, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The discipline to be imposed in this matter is a Censure. The Censure, of even date herewith, accompanies this Order.

2. Brown is taxed with the costs of this action as assessed by the Secretary, including the deposition costs.

Signed by the chair with the consent of the other hearing committee members, this the 10th day of June, 2004.

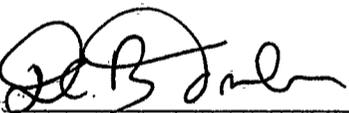


F. Lane Williamson, Chair
Hearing Committee

CONSENTED TO:



A. Root Edmonson
Deputy Counsel
North Carolina State Bar

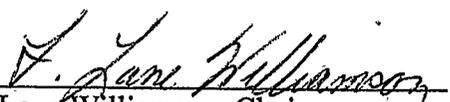


David B. Freedman
Counsel for B. Ervin Brown, II

After Singletary's case had been dismissed, Singletary made several calls to your office to get a status update. You initially failed to return Singletary's calls. By failing to return Singletary's calls seeking an update of the status of his matter, you failed to keep Singletary reasonably informed about the status of his matter and promptly comply with reasonable requests for information in violation of Rule 1.4(a) of the Revised Rules of Professional Conduct.

The hearing committee of the Disciplinary Hearing Commission hereby censures you for your professional misconduct. The hearing committee hopes that you will heed this censure, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

Issued this the 10th day of June, 2004.


F. Lane Williamson, Chair
Hearing Committee