

15799

WAKE COUNTY
NORTH CAROLINA



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

THE NORTH CAROLINA STATE BAR)	
Plaintiff)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
v.)	AND ORDER OF DISCIPLINE
)	
C. ANTHONY CORBETT, ATTORNEY)	
Defendant)	

THIS MATTER was heard on Friday, Aug. 20, 2004, before a duly assigned Hearing Committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; Elizabeth Bunting and R. Mitchel Tyler. The Defendant, C. Anthony Corbett, appeared on his own behalf. Carolin Bakewell represented the N.C. State Bar. Based upon the pleadings, evidence introduced at the hearing and arguments of counsel, 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, C. Anthony Corbett (Corbett) was admitted to the North Carolina State Bar in 1995, 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 relevant hereto, Corbett was engaged in the practice of law in the town of Louisburg, North Carolina.
4. Corbett filed a timely answer to the State Bar's original complaint herein.

5. Thereafter, Corbett was properly served with the State Bar's amended complaint and corrected amended complaint, but failed to file responsive pleadings thereto.

6. On July 20, 2004, the Secretary of the N.C. State Bar entered Corbett's default, based upon his failure to file an answer or other responsive pleading to the State Bar's amended complaint and corrected amended complaint.

7. Meanwhile, on June 15, 2004, Corbett failed to appear for his properly noticed deposition.

8. Corbett also failed to respond to the State Bar's interrogatories and requests for production of documents. On June 16, 2004, on motion of the State Bar, the Chair of the Hearing Committee entered an order directing Corbett to respond to the State Bar's discovery requests by July 5, 2004.

9. On July 7, 2004, the State Bar filed a motion for sanctions, based upon Corbett's failure to respond to discovery as directed by the Chair's June 16 order.

10. Corbett did not respond to the State Bar's motion for sanctions.

11. On July 20, 2004, the Chair of the Hearing Committee entered an order striking Corbett's answer to the original complaint and forbidding him to introduce testimony or evidence in either phase of the disciplinary proceeding.

12. The Hearing Committee has jurisdiction over Corbett's person and over the subject matter of the case.

13. On or shortly before Oct. 18, 2002, Corbett undertook to handle the closing of a residential real estate loan for Geraldine Moseley (Ms. Moseley).

14. Corbett handled the receipt and disbursement of funds relative to Ms. Moseley's closing but did not attend the closing, which was conducted by Randy Meares, a disbarred attorney.

15. On or about Oct. 24, 2002, a total of \$62,412.33 was deposited into Corbett's personal bank account number 2376233470 at First Citizens Bank (bank account # 3470), on Ms. Moseley's behalf.

16. Corbett was instructed to disburse the \$62,412.33 to pay off the prior note and deed of trust against Ms. Moseley's property and to pay off debts that Ms. Moseley owed to MBNA America, First USA Bank, and other creditors.

17. Between Oct. 24, 2002 and Dec. 2, 2002, Corbett disbursed all but \$15,604.50 of Ms. Moseley's funds. Included in the amounts disbursed by Corbett was a \$625 attorney fee. He divided that sum with Meares.

18. The remaining \$15,604.50 in closing funds should have been remitted to MBNA America and First USA Bank on Ms. Moseley's behalf.

19. Contrary to his instructions, Corbett did not make any further disbursements on Ms. Moseley's behalf after Dec. 2, 2002.

20. The balance in Corbett's bank account # 3470 should have remained at or above \$15,604.50 at all times following Dec. 2, 2002.

21. On Dec. 3, 2002, the balance in Corbett's bank account #3470 was below \$15,604.50. The balance in the account never equaled or exceeded \$15,604.50 at any time between Dec. 3, 2002 and Oct. 22, 2003. On a number of occasions between Dec. 3, 2002 and Oct. 22, 2003, there was a negative balance in bank account #3470.

22. Corbett disbursed funds belonging to Ms. Moseley for the benefit of himself and third parties other than Ms. Moseley without Ms. Moseley's knowledge and consent.

23. Corbett knowingly and falsely represented to Ms. Moseley and members of her family that her closing funds had been properly disbursed and that the creditors were improperly insisting that payment had not been received.

24. During the period in which Ms. Moseley's funds remained in Corbett's bank account #3470, personal funds belonging to Corbett and/or his wife were also present in the account.

25. Corbett had failed to make any restitution to Ms. Moseley as of the date of the hearing herein and she is still owed \$15,604.50.

26. Ms. Moseley has been subject to harassment by her creditors and her credit rating has been damaged as a result of Corbett's misappropriation of her closing funds.

27. Prior to March 1, 2002, Corbett undertook to represent a residential real estate transaction for a client named Christopher Morris (Morris).

28. On or about March 1, 2002, Corbett deposited or caused to be deposited a total of \$100,997.26 into Corbett's personal account number 867782359 at First Citizens Bank (hereafter bank account # 2359) on Morris' behalf.

29. Bank account #2359 was not a dedicated attorney trust account and personal funds belonging to Corbett and/or his wife were present in the account during the period in which the Morris funds remained in the account.

30. On or about March 4, 2002, Corbett disbursed \$1,675 of the attorney fee in the Morris closing to Meares.

31. Prior to April 11, 2002, Corbett undertook to represent a residential real estate transaction for Gladys Dunn (Ms. Dunn).

32. On or about April 11, 2002, Corbett deposited or caused to be deposited a total of \$23,947 into bank account # 2359 on Ms. Dunn's behalf.

33. Personal funds belonging to Corbett and/or his wife were present in the account during the period in which Ms. Dunn's funds remained in the account.

34. On or about April 15, 2002, Corbett disbursed \$175 of Ms. Dunn's closing funds to Meares.

35. Prior to August 2002, Geraldine Brake was killed in an automobile accident. Her estate was administered by her mother, Shirley Brake, who was an acquaintance of Randy Meares.

36. When Meares learned about Geraldine Brake's death, he contacted Corbett, who ultimately agreed to handle the wrongful death claim on behalf of Geraldine Brake's estate for a 1/3 contingent fee.

37. Corbett negotiated a settlement of the wrongful death claim with State Farm Insurance Co. for \$18,000 on Aug. 16, 2002, but had no direct contact with Shirley Brake. Ms. Brake believed that Meares was her attorney and was not aware of Corbett's involvement in the case or the fact that Meares did not have a law license.

38. Although Corbett knew that Geraldine Brake had two minor children, he did not file a lawsuit in the wrongful death matter nor did he seek the approval of the court regarding any claims that Brake's two minor children might have had against the settlement proceeds and/or arising from their mother's death.

39. On or about Aug. 16, Corbett received a check from State Farm Insurance Co. in the amount of \$18,000 in settlement of the Brake wrongful death claim and deposited the check into bank account # 3470.

40. On or about Aug. 29, Corbett disbursed \$12,000 of the settlement funds to Shirley Brake. Corbett retained the remaining \$6,000 as his fee.

41. Between Aug. 16 and Aug. 29, 2002, when the Brake wrongful death settlement funds remained in his bank account #3470, personal funds belonging to Corbett and/or his wife were also present in the account.

42. On or about Aug. 29, Corbett divided the \$6,000 fee with Meares by issuing a \$4,000 check to Meares.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. By misappropriating funds belonging to Geraldine Moseley for his own use and benefit without his client's consent, Corbett engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), engaged in criminal conduct in violation of Rule 8.4(b) and engaged in a conflict of interest in violation of Rule 1.7(a).
2. By failing to disburse the Moseley closing funds as directed by Ms. Moseley, Corbett failed to pay or deliver client funds as directed by his client in violation of Rule 1.15-2(m) and failed to hold client funds intact in violation of Rule 1.15-2(a).
3. By falsely representing to Ms. Moseley and members of her family that her closing funds had been properly disbursed and that her creditors were improperly insisting that payment had not been received, Corbett engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).
4. By depositing funds belonging to Ms. Moseley, Ms. Dunn, Mr. Morris and the Brake estate into his personal bank account rather than a trust account and by maintaining personal funds in the account, Corbett failed to maintain client funds in a dedicated trust account and commingled client and personal funds in violation of Rule 1.15-2(a), (b) and (f).
5. By paying \$4,000 of the Brake wrongful death settlement funds, \$175 of the Dunn closing funds and \$1,675 of the Morris closing funds to Randy Meares, a disbarred attorney, Corbett engaged in fee splitting with a non-lawyer in violation of Rule 5.4(a).

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:
 - a. Multiple violations of the Revised Rules of Professional Conduct.
 - b. Defendant engaged in a pattern of misconduct.
 - c. Failure to make restitution.
 - d. Defendant's misconduct was at least in part motivated by a selfish and dishonest motive.

- e. Defendant was reprimanded pursuant to a consent order entered by the DHC on Aug. 25, 2000.
- f. Defendant engaged in bad faith obstruction of the disciplinary process by failing to respond to the State Bar's discovery and violating the Chair's order directing him to respond to the State Bar's interrogatories and requests for production of documents.

2. The Committee finds that there are no mitigating factors present.

3. Although Corbett did not file a motion to conduct a disability hearing as provided in 27 NCAC 1B .0118(c), some evidence regarding his mental and physical capacity was admitted into evidence. The hearing committee finds that at all times relevant to this case, Corbett was not disabled within the meaning of 27 NCAC 1B .0103(19).

4. Corbett's misconduct has caused substantial actual harm to his client, Geraldine Moseley and has harmed the standing of the legal profession in the eyes of some members of the public.

5. Corbett's law license was suspended in March 2004 for failure to comply with the State Bar's mandatory continuing legal education requirements. He was personally served with the suspension order, but did not tell his employer and continued to engage in the practice of law until at least June 2004.

6. An order calling for discipline short of disbarment would not sufficiently protect the public for the following reasons:

- a. Corbett engaged in a multiple violations of the Revised Rules of Professional Conduct over a substantial period of time. His misconduct was not the result of a mistake, nor did it appear to be an aberration and it therefore appears that his misconduct is the product of a character flaw that is not readily changeable.
- b. Corbett has offered no plausible evidence or assurances that he has addressed the problem or flaw that led to his misconduct. The fact that Corbett deceived his employer and continued to practice law after his license was suspended indicates that he is either unwilling or unable to abide by the Rules of Professional Responsibility. Consequently, the Committee finds that there is a substantial risk that his misconduct would be repeated if he were permitted to retain his law license.
- c. The protection of the public requires that Corbett be disbarred and that he not resume the practice of law until he demonstrates that he understands the Rules of Professional Conduct, will abide by them and has reformed.

- d. The reprimand issued to Corbett in 2000 was insufficient to deter him from additional, very serious violations of the Rules of Professional Conduct. Indeed, some of the misconduct cited in this order occurred while Corbett was still receiving psychiatric counseling as required by the Aug. 25, 2000 consent order. It thus appears that the only way to protect the public from Corbett is to prevent him from practicing law.
- e. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses which Corbett committed, would be inconsistent with the orders of discipline entered by this body in similar cases and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Relevant to Discipline, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

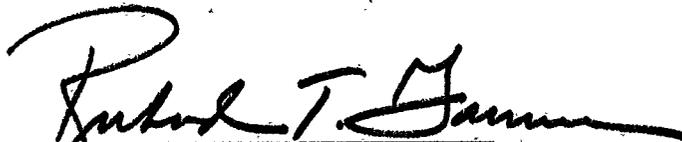
1. The defendant, C. Anthony Corbett, is hereby DISBARRED from the practice of law in this state, effective 30 days from the date of service of this order upon the defendant.
2. Within 90 days of service of the statement of costs upon him, the Defendant shall pay the costs of this proceeding, including the costs associated with the Defendant's June 15, 2004 deposition.
3. As a condition precedent to reinstatement, Defendant shall
 - a) present evidence that he has made restitution to Geráldine Moseley in the amount of \$15,654.50. If she is reimbursed by the Client Security Fund, Defendant shall demonstrate that he has reimbursed all amounts paid by the Client Security Fund to Ms. Moseley prior to seeking reinstatement of his law license.
 - b) obtain a psychiatric examination from a psychiatrist approved by the North Carolina State Bar and demonstrate that he is not suffering from a mental or physical disorder that significantly impairs his judgment, competence or performance as an attorney. The examination shall be performed not sooner than 6 months before Defendant files his petition for reinstatement. Defendant shall provide a release to the Counsel of the N.C. State Bar along with his petition for reinstatement,

permitting Counsel to obtain copies of all records relating to the examination. The release shall not be revoked.

4. Corbett shall surrender his law license and bar membership card within 30 days after service of this order upon him.

Signed by the Chair of the Hearing Committee with the consent of the other hearing committee members.

This the 31st day of August, 2004.



Richard T. Gammon, Chair
Disciplinary Hearing Committee