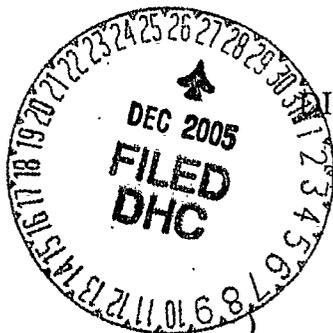


NORTH CAROLINA

WAKE COUNTY



BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 05 DHC 2

The North Carolina State Bar, Plaintiff

v.

Robert T. Hedrick, Attorney, Defendant

Order of Discipline

This matter was heard on November 18, 2005, before a Hearing Committee of the Disciplinary Hearing Commission composed of the Chair, Karen Eady-Williams, and members T. Richard Kane and Johnny A. Freeman, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The Plaintiff was represented by David R. Johnson, Deputy Counsel. Defendant Robert T. Hedrick was present and was represented by Alan M. Schneider. Based upon the record and the evidence introduced at the hearing, the Hearing Committee, by clear, cogent, and convincing evidence, hereby 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, Robert T. Hedrick (hereinafter Hedrick), was admitted to the North Carolina State Bar on 18 August 1961, 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 or a portion of the relevant periods referred to herein, Hedrick was actively engaged in the private practice of law in the City of Raleigh, Wake County, North Carolina.

4. During all times relevant to this matter, Milton Croom (hereafter "Croom") and P.D. Williams (hereafter "Williams") were residents of Wake County.

5. At some time around 1990, Williams began employment with a business corporation named Cal-Tone Paints, Inc. (hereafter "Cal-Tone"). At the time of Williams' employment, Croom was the majority stockholder of Cal-Tone.

6. At some time around 1992, Hedrick represented Williams on a personal legal matter. After this, Hedrick began to represent Cal-Tone on several business related matters.

7. At some time in the mid-1990's, Croom consulted with Hedrick about executing a charitable remainder trust in a form similar to that prepared on his behalf in the late 1980's by another law firm. After meeting with Hedrick, Croom decided not to execute the trust.

8. After Croom decided not to execute the trust, Hedrick continued to provide legal services for Williams personally and for Cal-Tone and other business entities associated with Cal-Tone. Hedrick had a continuing attorney-client relationship with Williams individually and the businesses owned and operated by Croom and/or Williams.

9. During or about November 1997, Williams was elected president of Cal-Tone. Hedrick was asked by Croom and/or Williams to prepare appropriate documentation of Williams' authority after her election as president. Hedrick prepared the documentation, which Croom and Williams executed.

10. In early February 1998, Croom decided to fund the charitable remainder trust and executed a trust agreement (hereafter "trust agreement") that Hedrick prepared based on the prior agreement reviewed by Croom and Hedrick three or four years earlier. The trust agreement appointed Croom's sister as the sole trustee. Immediately after execution of the trust agreement, Croom's sister resigned as trustee. Williams and Croom were then appointed as co-trustees. Shortly after the execution of the trust agreement, Croom transferred three assets into the trust: (1) all of his stock in Cal-Tone (a majority interest in the company), (2) the real property in

Wake County on which the Cal-Tone manufacturing plant was located, and (3) a 38 foot sailboat named "Getaway" (hereafter "sailboat"). Hedrick prepared the documentation for the resignation and appointment of the trustees and the transfer of Croom's assets to the trust.

11. The sailboat was kept in a slip at a marina in Carteret County, North Carolina. On September 16, 1999, Hurricane Floyd caused the sailboat to be grounded, requiring the services of a boat towing company to return it to slip. At that time, Williams informed Hedrick that the trust was not in a position to pay for the towing services. Williams and Hedrick then discussed Hedrick's acquisition of the sailboat from the trust.

12. Pursuant to discussions with Williams and/or Croom on behalf of the trust, Hedrick agreed to buy the sailboat from the trust for \$50,000.00.

13. Hedrick then prepared a promissory note (hereafter "note") payable to the trust in the principal amount of \$50,000.00 with interest at 6% due on or before two years from its date to be signed by him. At the time of the transaction the prime rate was 8.25%. Hedrick also prepared a bill of sale from the trust to himself and a North Carolina Wildlife Resources Commission boat registration transferring title to the sailboat from the trust to Hedrick. Hedrick took the bill of sale and the registration to Williams.

14. Williams signed the bill of sale and the registration to the sailboat on or about September 20, 1999.

15. Hedrick signed the promissory note on or about September 22, 1999. Hedrick took the original promissory note to Williams. Williams signed the satisfaction section of the note and entered the number "2" on the "day" blank on the satisfaction in Hedrick's presence. Williams returned the note to Hedrick, who kept the note in his possession.

16. Hedrick then filed the sailboat registration transfer with the Wildlife Resources Commission on September 22, 1999.

17. Hedrick did not prepare, execute, file or record any lien on the sailboat or other security instrument in favor of the trust with respect to his obligation to pay on the promissory note.

18. Hedrick informed Williams that he would arrange for a bank safe deposit box to which both he and Williams would have access and in which Hedrick's note would be stored until it was due. Williams gave Hedrick the original note that she had marked as satisfied at that time. Hedrick left a copy of the note with his signature, but not Williams' signature on the satisfaction, with Williams. Hedrick later delivered a signature card for the safe deposit box to Williams and Williams signed it, but Hedrick never placed the note in a safe deposit box. Instead, Hedrick kept the note at his home.

19. Within a few days after Williams returned Hedrick's note to him, Hedrick typed the month of "October" and the year "2001" in the blanks on the satisfaction section of the note above and "Trustee" below Williams' signature. At the time of those entries on the note, Hedrick had given the trust no consideration for the sailboat other than the note and had made no payments on the note.

20. In August 2001, shortly before the due date of the Hedrick's promissory note, Hedrick prepared an extension of time to pay the note for two years until September 22, 2003. Both Hedrick and Williams signed the extension agreement for payment of the note. At the time of extension on the note, Hedrick had given the trust no consideration for the sailboat other than the note and had made no payments on the note. Hedrick also knew that the extension agreement would extend the time for payments on the note past the date of satisfaction shown on the face of the note.

21. During or about October 2001, Croom filed a special proceeding in Wake County to remove Williams as a co-trustee of the trust. On January 10, 2002, Williams resigned as co-trustee of the trust. Attorney Brian Howell (hereafter "Howell") was then appointed as the sole trustee of the trust by consent order of the court on January 14, 2002.

22. On or about September 23, 2003, Howell, in his capacity as trustee of the trust, delivered a notice to Hedrick demanding payment on the Hedrick's note. Hedrick made no payment on his note to the trust.

23. On or about October 3, 2003, the trust filed a complaint in Wake County Superior Court, File No. 03 CVS 13871, against Hedrick to collect on the note.

24. On or about December 15, 2003, Hedrick filed his answer to the complaint brought against him in Wake County Superior Court, File No. 03 CVS 13871. The answer also asserted a counterclaim and a third party complaint against Williams. Hedrick admitted in his answer that he had made no payments on the note. Hedrick further asserted in his answer that "it was never intended that Hedrick pay the trust any amount due under the note." Hedrick alleged in his counterclaim that Williams had agreed to pay the note on his behalf in consideration of various legal services Hedrick had provided Williams and/or business entities operated by Williams over a period of several years. None of these alleged debts of Williams to Hedrick were obligations of the trust.

25. Hedrick had not documented any arrangement he had with Williams under which Williams would pay his obligation under the note to the trust.

26. On or about May 27, 2004, the trust obtained a judgment against Hedrick in Wake County File No. 03 CVS 13871 on the promissory note Hedrick executed for payment on the sailboat to the trust in the amount of \$50,000 plus interest. On or about August 10, 2004, the trust obtained a judgment against Hedrick in the amount of \$7,500.00 for attorneys' fees. Hedrick had made no payments to the trust before the judgment was rendered.

27. Hedrick satisfied the judgments pursuant to an agreement with the trustee on or about August 5, 2005 and Howell canceled the judgments.

28. On July 18, 2005, Hedrick obtained a judgment against Williams in the amount of \$50,000 plus interests and costs based on his third party claim against Williams in Wake County File No. 03 CVS 13871. Williams did not attend the hearing at which the judgment was awarded to Hedrick. The court trebled the damages, finding that Williams had engaged in unfair and deceptive trade practices pursuant to N.C.G.S. § 75-1.1.

Based upon the foregoing **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 Robert T. Hedrick and the subject matter. By appearing and participating in the

proceedings without objection, Hedrick waived any and all defects in the service of the summons and complaint and in the notice of the hearing.

2. Hedrick'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) in that the conduct violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

(a) By allowing a co-trustee of the trust to sign the satisfaction of his note at a time when he knew that the note had not been satisfied and by completing the date of the satisfaction in advance, Hedrick engaged in conduct involving misrepresentation in violation of Rule 8.4(c);

(b) By participating in an arrangement under which Hedrick acquired the sailboat from the trust in consideration for the forgiveness of the obligations of Williams to him as a client on unrelated matters, Defendant engaged in a conflict of interest in violation of Rule 1.7(b); and

(c) By acquiring the sailboat from the trust under terms that were not fair and reasonable to the trust, Defendant engaged in business transaction with a client that was not fair and reasonable in violation of Rule 1.8(a).

Based upon the foregoing **Findings of Fact and Conclusions of Law**, and upon additional clear, cogent, and convincing evidence, the Hearing Committee hereby makes these additional:

#### **Findings of Fact Regarding Discipline**

1. Hedrick received an admonition from the Grievance Committee on February 6, 2003 for conducted related to failure to keep his client properly informed regarding the status of the client's case.

2. Hedrick has a reputation for good character in the community and the Bar, including a good reputation among judges in Wake County.

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. Hedrick's misconduct is aggravated by the following factors:
  - (a) A prior disciplinary offense;
  - (b) A selfish motive;
  - (c) Substantial experience in the practice of law; and
  - (d) Indifference to making restitution.
2. Hedrick's misconduct is mitigated by the following factors:
  - (a) Good character and reputation;
  - (b) Full and free disclosure to the Hearing Committee;
  - (c) A cooperative attitude toward the proceedings; and
  - (d) Remorse.
3. The weight of the aggravating factors outweigh the weight of the mitigating factors.
4. Hedrick's conduct caused significant harm to his client, the trust, by causing the trust to sue him for payment on his obligation on the note at a time when the trust needed liquid assets and had the potential for additional significant harm had he not eventually paid his obligation on the note.
5. The Committee has carefully considered the different forms of discipline available to it and concludes that the protection of the public does not require suspension of Hedrick's license given the unique facts of this case and the long-standing relationship between Hedrick and Williams, but the degree of potential harm to the client requires stronger discipline than a reprimand. Accordingly, the Committee concludes that the appropriate discipline is a censure.

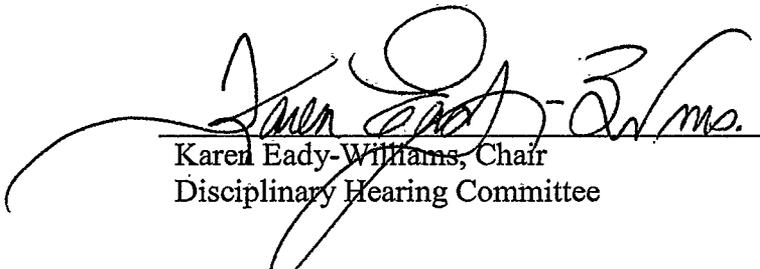
6. In choosing censure instead of suspension or a suspension stayed upon conditions, it is the expectation of the Committee that Hedrick will not violate any state or federal laws, not violate any of the Rules of Professional Conduct, remain current on all continuing education requirements, promptly report any changes of address, promptly respond to all notices from the State Bar, and pay all State Bar dues and Client Security Fund assessments on a timely basis.

Based upon the foregoing **Findings of Fact, Conclusions of Law** and the **Findings of Fact Regarding Discipline**, and the **Conclusions with Respect to Discipline**, the Hearing Committee enters the following:

**Orders of Discipline**

1. The Defendant, Robert T. Hedrick, is hereby CENSURED for his conduct.
2. The Committee finds that the costs of deposing Hedrick by the Plaintiff was a reasonable and necessary cost of this proceeding and Hedrick is hereby taxed with the costs of his deposition. The other costs of this proceeding are taxed Hedrick and shall be paid as assessed by the Secretary with 30 days of the effective date of this order.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this the 22<sup>nd</sup> day of December, 2005

  
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Karen Eady-Williams, Chair  
Disciplinary Hearing Committee