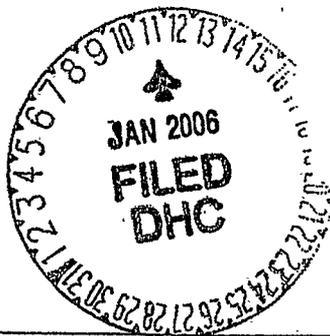


NORTH CAROLINA
WAKE COUNTY



16247

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 41

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

NATHANAEL K. PENDLEY, Attorney,
Defendant

)
)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND ORDER OF DISCIPLINE
)
)

On November 18, 2005, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair; Charles M. Davis, and R. Mitchel Tyler. A. Root Edmonson represented the North Carolina State Bar and the Defendant appeared *pro se*. 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 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, Nathanael K. Pendley ("Pendley"), was admitted to the North Carolina State Bar on November 11, 1988 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, Pendley actively engaged in the private practice of law in the State of North Carolina and maintained a law practice in the town of Clemmons, Forsyth County, North Carolina.

4. In April 2001, Mr. Michael R. Fleming ("Fleming") retained Pendley to handle the adoption of Fleming's stepson, Nicholas Reed Giroux. Fleming paid Pendley the \$500 legal fee Pendley requested.

5. On January 17, 2002, Pendley filed a petition for adoption on Fleming's behalf with the Forsyth County Clerk of Superior Court.

6. On October 2, 2002, after being advised by a representative of the Department of Social Services ("DSS") that DSS had contacted Pendley in July 2002 to get him to prepare a final adoption decree for Fleming without success, Fleming prepared a fee dispute petition that he sent to the North Carolina State Bar.

7. On October 2, 2002, an assistant clerk in Forsyth County signed a Decree of Adoption for Fleming's adoption of Nicholas Reed Fleming (formerly Giroux.)

8. On October 4, 2002, a fee dispute file was opened against Pendley based upon the petition mailed by Fleming. The fee dispute was assigned file number 02FD0506 by the North Carolina State Bar.

9. On October 7, 2002, Luella C. Crane ("Crane") sent Pendley a Notification of Mandatory Fee Dispute Resolution ("notification") by certified mail that advised Pendley of his obligation to provide a written response to Fleming's petition within 15 days of his receipt of the notification.

10. The State Bar's fee dispute file does not contain a return receipt showing when Pendley received Crane's October 7, 2002 letter.

11. On November 18, 2002, after not receiving a response to the Fleming fee dispute from Pendley, Crane sent Pendley a second notification letter by certified mail reminding him that he had a duty to respond to the fee dispute sent to him on October 7, 2002.

12. On November 20, 2002 Pendley received Crane's November 18, 2002 second notification letter.

13. Pendley failed to respond to the Fleming fee dispute petition.

14. On January 16, 2003, as a result of Pendley's failure to respond to the Fleming fee dispute petition, the North Carolina State Bar opened a grievance against Pendley. The grievance was assigned file number 03G0101.

15. On May 6, 2003, Pendley was sent a Letter of Notice authorized by the Chair of the Grievance Committee by certified mail that advised Pendley that he had 15 days to respond to the substance of the grievance in 03G0101 that was attached to the letter.

16. On May 7, 2003, Pendley received the May 6, 2003 Letter of Notice.

17. Pendley failed to timely respond to the Letter of Notice, even after receiving a May 29, 2003 letter reminding him of his duty to respond.

18. On or about November 5, 2003, Billy F. May ("May") consulted with Pendley about the possibility of Pendley representing May in two auto accident cases that occurred in 2003. Both accidents occurred out of state.

19. May left his files on the two accidents with Pendley.

20. Pendley contacted the two insurance companies that insured the other drivers in May's accidents. Pendley advised representatives of the insurance companies that he was calling on May's behalf, but never sent a letter of representation to the insurance companies as they requested.

21. In late December 2003, May moved from the state, and asked Pendley to return his files to him.

22. On June 10, 2004, when Pendley failed to return his files to him, May contacted Amber Moore ("Moore") with the Client Assistance Program of the North Carolina State Bar.

23. On June 10, 2004 and June 11, 2004, Moore left messages for Pendley concerning May's desire to get his files from Pendley.

24. On June 22, 2004, after receiving a voicemail from Pendley, Moore talked with Pendley. Pendley told Moore that he would send May his files and send Moore a copy of the cover letter.

25. On June 6, 2004, after again being contacted by May due to Pendley's failure to return May's file, Moore left Pendley another message reminding him to send May his files.

26. Pendley failed to timely return May's files to him.

27. On July 16, 2004, after Pendley failed to send the files to him, May filed a grievance against Pendley with the North Carolina State Bar. The grievance was assigned the file number 04G0829.

28. On July 29, 2004, Pendley was sent a Letter of Notice authorized by the Chair of the Grievance Committee by certified mail that advised Pendley that he had 15 days to respond to the substance of the grievance in 04G0829 that was attached to the letter.

29. On July 30, 2004, Pendley received the July 29, 2004 Letter of Notice.

30. When Pendley failed to timely respond to the Letter of Notice, an August 20, 2004 letter was sent to Pendley reminding him of his duty to respond. The letter asked Pendley to respond by August 27, 2004.

31. After receiving the reminder letter, Pendley asked for two extensions of time to respond. Pendley was given two extensions, the last of which gave Pendley until September 30, 2004 to respond to May's grievance.

32. On October 1, 2004, Pendley faxed three pages of a response to the North Carolina State Bar. The bottom of the third page of the response ended mid-sentence. In the part of the response that was received, Pendley had not responded to the issue of whether Pendley had sent May his files.

33. On November 1, 2004, a Deputy Counsel of the North Carolina State Bar sent a letter to Pendley advising him that only three pages of his response had been received, and that there appeared to be pages that were not received. Pendley was asked to provide an additional response that would include a response to May's allegation that Pendley hadn't returned his files. The letter requested that Pendley respond further no later than November 12, 2004.

34. When Pendley failed to respond to the November 1, 2004 letter, on November 15, 2004, Deputy Counsel sent another letter to Pendley asking for Pendley's further response to May's grievance to be filed no later than December 1, 2004.

35. Pendley failed to make any further response to the May 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 Pendley and the subject matter.

2. Pendley'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 provide a response to Fleming's fee dispute petition, Pendley failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- (b) by failing to timely respond to a lawful demand for information from a disciplinary authority in the Fleming grievance, Pendley violated Rule 8.1(b);
- (c) by failing to timely return May's files to him after numerous requests by May and Moore beginning in December 2003, Pendley failed to surrender papers and property to which the client is entitled upon termination of the representation in violation of Rule 1.16(d); and

- (d) by failing to respond to a lawful demand for information from a disciplinary authority in the May grievance, Pendley violated Rule 8.1(b).

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. Pendley's misconduct is aggravated by the following factors:
 - (a) prior disciplinary offenses;
 - (b) a pattern of misconduct;
 - (c) multiple offenses; and
 - (d) substantial experience in the practice of law.
2. Pendley's misconduct is mitigated by the following factor:
 - (a) absence of a dishonest or selfish motive;
 - (b) mental impairment or emotional problems; and
 - (c) genuine remorse.
3. An order calling for discipline short of a stayed suspension of Pendley's license would not sufficiently protect the public and the profession for the following reasons:
 - (a) Pendley failed to adequately respond to at least six attempts the State Bar made to get him to respond to the allegations made by his clients in these matters when they were pending before the Fee Dispute Resolution Program or the Grievance Committee.
 - (b) Pendley also failed to answer the allegations after they were brought in the Disciplinary Hearing Commission. This is so even though he was personally served with the Complaint, and initially asked for an extension of time to respond. However, Pendley did appear at the hearing and participate in the proceeding.
 - (c) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of Pendley's failure to attend to his obligation to abide by the rules of the North Carolina State Bar concerning the administration of the disciplinary process.

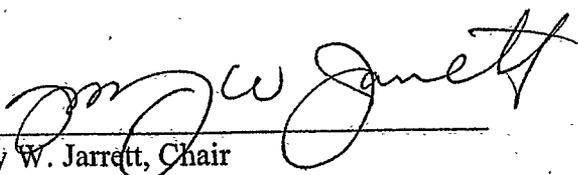
- (d) When the Fleming grievance was pending before the Grievance Committee, Pendley was offered an opportunity to have the grievance deferred by his acceptance of a referral to the Lawyer Assistance Program. On July 23, 2004, Pendley consented to the referral. However, Pendley failed to complete his Lawyer Assistance Program contract.

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, Nathanael K. Pendley, is suspended for two years.
2. The two-year suspension is stayed upon the following conditions:
 - a) Pendley shall obtain a physical and mental examination by a psychiatrist approved by the North Carolina State Bar within 3 months from service of this order upon him. The evaluation and any subsequent treatment shall be obtained at Pendley's expense.
 - b) Pendley shall comply with all treatment recommendations of the psychiatrist thereafter.
 - c) Pendley shall execute a written release authorizing the Office of Counsel of the North Carolina State Bar to contact the psychiatrist who performs the evaluation and treatment to obtain copies of his medical records relating to his evaluation and treatment from the psychiatrist and all other treating medical personnel.
 - d) Pendley shall respond to all communications from the North Carolina State Bar within 30 days of receipt or the deadline stated in the communication, whichever is earlier.
 - e) Pendley shall not violate the Revised Rules of Professional Conduct or the laws of any state or of the United States.
 - f) Pendley shall maintain his membership dues owed to the North Carolina State Bar and comply with all mandatory continuing legal education requirements.
 - g) Pendley shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar.

Signed by the chair with the consent of the other hearing committee members, this
the 9th day of January 2006.



Tommy W. Jarrett, Chair
Hearing Committee