

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 33

THE NORTH CAROLINA STATE BAR)
Plaintiff)
v.)
JOHN R. HUGHES, ATTORNEY)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of John B. McMillan, Chairman; Karen Boyle and Donald Osborne on Friday, June 1, 1990. The Plaintiff was represented by Carolin Bakewell. The Defendant did not appear and was not represented by counsel at the hearing. Based upon the pleadings and the evidence, the Committee makes the following Findings of Fact:

1. 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. Defendant, John R. Hughes, was admitted to the North Carolina State Bar in 1969 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, Code of Professional Responsibility and the Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina. All references to rules hereinafter are to the Rules of Professional Conduct.
3. During all of the relevant periods referred to herein, Hughes was engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Lenoir, Caldwell County, N.C.
4. In late 1988, L. Thomas Harrison retained Hughes to draft some restrictive covenants for a subdivision which Harrison wished to develop. Harrison also hired Hughes to check titles on some parcels of real property and draft deeds to buyers of the property.
5. Harrison paid Hughes a \$500 advance fee in two installments on Dec. 16, 1988 and January 5, 1989.
6. Hughes failed to complete the legal work he undertook to handle for Harrison.

7. Hughes failed to communicate with Harrison regarding the legal matters for which he was hired.

8. In late January or early February 1989, Hughes abandoned his law practice and left North Carolina.

9. Hughes failed to notify Harrison that he would not continue to represent Harrison, nor did Hughes take any steps to avoid prejudice to Harrison prior to leaving the jurisdiction.

10. Hughes failed to return any portion of the advance fee paid to him by Harrison prior to abandoning his law practice.

12. Hughes was suspended from membership in the North Carolina State Bar for nonpayment of his 1989 North Carolina Bar dues on October 20, 1989.

13. The plaintiff's complaint was filed in this action on Nov. 14, 1989.

14. Hughes failed to notify the N.C. State Bar of his current address after leaving Lenoir and could not be located for personal service of the complaint. Service was therefore had by publication pursuant to Rule 4(j1). Hughes failed to answer the complaint and an order of default was entered on Jan. 26, 1990.

15. A hearing on the plaintiff's complaint was set for March 9, 1990. On March 8, 1990, plaintiff's counsel learned of Hughes' current address. Thereafter, by consent of all parties, the default was set aside and the disciplinary hearing continued.

16. On March 22, 1990, Hughes accepted service of the plaintiff's complaint. Hughes filed his answer to the complaint with the N.C. State Bar on March 26, 1990.

17. On March 27, 1990, the plaintiff served Hughes with the plaintiff's first request for production of documents and first interrogatories. Hughes failed to file answers or objections to the discovery requests and the plaintiff filed a motion to compel discovery responses on May 3, 1990.

18. On May 18, 1990, a hearing was held on plaintiff's motion to compel answers to plaintiff's first interrogatories and first request for production of documents. Hughes did not respond to plaintiff's motion, nor did he attend the hearing on May 18.

19. On May 24, 1990, the Chairman of the Hearing Committee, pursuant to plaintiff's motion, entered an order compelling Hughes to respond to plaintiff's request for documents and first interrogatories. Hughes failed to comply with the order of discovery.

20. On May 30, 1990, the Chairman of the Hearing Committee contacted Hughes by telephone, at which time Hughes indicated that he did not intend to attend the disciplinary hearing set for June 1, 1990.

BASED UPON THE FOREGOING FINDINGS OF FACT, the Committee makes the following conclusions of law:

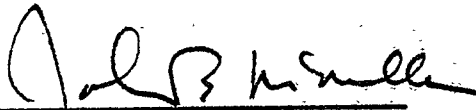
(a) By failing to handle legal matters assigned to him by Harrison, Hughes neglected a legal matter in violation of Rule 6(B)(3), failed to carry out the lawful objectives of a client in violation of Rule 7.1(A)(1) and failed to carry out a contract of employment in violation of Rule 7.1(A)(2).

(b) By failing to refund to Harrison the advance fee paid by Harrison, Hughes violated Rule 2.8(A)(3).

(c) By failing to notify Harrison that he would not be representing him further and by failing to take steps to avoid prejudice to Harrison before abandoning his law practice, Hughes violated Rule 2.8(A)(2).

(d) By failing to communicate adequately with Harrison, Hughes violated Rule 6(B)(1).

This the 21st day of June, 1990.


John B. McMillan, Chairman
For the Committee

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ORDER OF DISCIPLINE

This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, June 1, 1990. In addition to the findings of fact previously made, the Committee hereby makes the following additional:

FINDINGS OF FACT

1. The Defendant's misconduct is aggravated by his failure to cooperate with the N.C. State Bar during this proceeding.
2. The Defendant was abusing alcohol during late 1988 and early 1989. There is no evidence that the Defendant has been rehabilitated from his alcohol abuse.

Based upon the evidence presented at trial and the arguments of counsel for the Plaintiff, the Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant is hereby suspended from the practice of law for a period of three years, commencing 30 days after service of this order upon the Defendant;
2. At any time after one year of the suspension has elapsed, the Defendant may apply for an order staying the remaining term of the suspension upon the following conditions:
 - (a) The Defendant shall file a petition pursuant to Section 25(B) of the Discipline & Disbarment Rules of the N.C. State Bar;
 - (b) The Defendant must abstain from the use of alcohol and illegal substances throughout the stay period;
 - (c) The Defendant shall demonstrate that he has received treatment for alcoholism and that he has abstained from the use of alcohol for a sufficient period of time to demonstrate fitness to resume the practice of law;

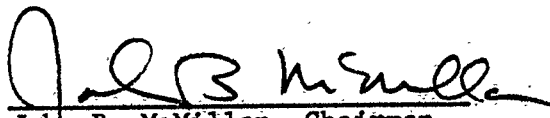
(d) The Defendant shall present evidence that he has re-taken and passed the North Carolina Bar examination.

3. If the Defendant does not obtain a stay, the Defendant shall comply with all of the conditions set out in paragraph 2 (a), (c) and (d) above before obtaining the reinstatement of his license at the end of the three-year period of suspension.

4. The Defendant shall pay the costs of this proceeding.

5. The Defendant shall comply with all provisions of Section 24 of the Discipline & Disbarment Rules.

Signed by the Chairman with the knowledge and consent of the Committee members this the 21st day of June, 1990.


John B. McMillan, Chairman