

7206

NORTH CAROLINA  
WAKE COUNTY

FILED  
1986 FEB 17 11 00 AM  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
85 DHC 17

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

DAVID M. LOMAS, Attorney,  
Defendant

ORDER

This cause came on to be heard and was heard before a duly constituted Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar composed of Philip A. Baddour, Jr., Chairman, Alice W. Penny, and John G. Shaw on January 3, 1986. The Plaintiff was represented by its counsel, L. Thomas Lunsford, II, and the Defendant, by Joseph B. Cheshire, V.

NOW THEREFORE, the Hearing Committee, having heard the evidence and arguments of Counsel, and having made certain FINDINGS OF FACT AND CONCLUSIONS OF LAW, all appearing of record herein, hereby orders that:

1. The Defendant be suspended from the practice of law for a period of two years, with the last 18 months of said period of suspension stayed upon the following conditions to which the Defendant freely consents:

- a. The Defendant shall immediately seek and obtain psychiatric or psychological treatment for the personality disorders which were, in part, responsible for his neglect, his prevarication and his failure to cooperate with the Plaintiff in the investigation of the grievance upon which this proceeding was based, and shall submit to the Plaintiff as a precondition of reinstatement to active practice a report from his psychologist or psychiatrist indicating satisfactory progress in the treatment of his condition and the present ability to ethically cope with the responsibilities of a practicing attorney; and

b. The Defendant shall also as a precondition of reinstatement to active practice arrange for a senior member of the Durham County Bar to consult with him relative to the administration of his law practice at least monthly during the period any portion of his suspension is stayed. During any such period, the Defendant will be responsible for submitting to the Plaintiff quarterly reports from the consulting attorney concerning the state of his practice. Any report of irresponsible performance shall be grounds for lifting the stay.


c. The Defendant shall fully comply with §24 and 25 of the Rules of Discipline and Disbarment concerning the winding up of his practice and reinstatement.

2. The period of suspension shall begin 30 days from the day upon which this order is served upon the Defendant or upon which this order is affirmed on appeal.

3. The Defendant shall surrender his law license and his membership card to the Secretary of the North Carolina State Bar.

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

This the 23 day of January, 1986.

  
Philip A. Baddour, Jr.  
Hearing Committee Chairman  
(For the Committee)

Committee member John G. Shaw concurs in the Findings of Fact and Conclusions of Law but dissents regarding the duration of the mandatory active portion of the suspension provided in the Order of Discipline, being of the opinion that such period of suspension should have been nine months.

NORTH CAROLINA FILED  
WAKE COUNTY 1986 FEB 17 PM 3:18  
S.E. JAMES C. SEC.  
THE N.C. STATE BAR

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
85 DHC 17

---

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
vs. )  
DAVID M. LOMAS, Attorney, )  
Defendant )

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

---

This cause came on to be heard and was heard before a duly constituted Committee of the Disciplinary Hearing Commission of the North Carolina State Bar composed of Philip A. Baddour, Jr., Chairman, Alice W. Penny and John G. Shaw on January 3, 1986. The Plaintiff was represented by its Counsel, L. Thomas Lunsford, II, and the Defendant was present and was represented by his Counsel, Joseph B. Cheshire, V. The said Hearing Committee, having considered the pleadings and stipulations and having heard the evidence and arguments of Counsel, found the following facts by clear, cogent and convincing evidence:

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, David M. Lomas, was admitted to the North Carolina State Bar on September 8, 1976, 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 Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Durham, Durham County, North Carolina.
4. In May 1984, the Defendant was employed to represent Evelyn H. Poston and Janice E. Poston (hereinafter referred to as the Postons) in the appeal of three civil cases from Guilford County which had been decided adversely to the Postons. The

three cases were entitled, "Evelyn H. Poston v. Morgan - Schulthesis, Inc.", 76 CVS 2096 (hereinafter referred to as the 1976 case); Evelyn H. Poston v. Morgan-Schulthesis, Inc., Roy G. Morgan and Imogene Morgan," 80 CVS 5727; and Evelyn H. Poston and Janice E. Poston v. Roy G. Morgan," 80 CVS 7495 (the latter cases being hereinafter referred to as the 1980 cases). In June 1984, the Defendant was also employed to represent the Postons in the appeal of another Guilford County case, "Evelyn H. Poston and Janice E. Poston v. Morgan-Schulthesis Inc. and Roy G. Morgan," 79 CVS 7468 (hereinafter referred to as the 1979 case). The Defendant was paid \$500 for his representation in those cases.

5. Prior to employing the Defendant, the Postons were represented in the 1976 and 1980 cases by William F. May (hereinafter referred to as May) of the Guilford County Bar. After the Defendant was employed, May continued in those cases as secondary counsel. By agreement with the Postons and May, the Defendant assumed primary responsibility for perfecting all the appeals.

6. Prior to the employment of the Defendant, May had obtained extensions of time for filing proposed records on appeal in the 1976 and 1980 cases. The proposed record in the 1976 case was due on May 30, 1984. The proposed records in the 1980 cases were due on June 29, 1984.

7. On or about May 30, 1984, the Defendant filed and served upon opposing counsel a proposed record on appeal in the 1976 case.

8. On or about June 28, 1984, the adverse party in the 1976 case filed objections to the proposed record on appeal and served the same upon the Defendant.

9. The Defendant thereafter intentionally failed to take any further action to settle the record on appeal in the 1976 case and, on August 20, 1984, suffered that appeal to be dismissed by the Superior Court on motion of the adverse party for failure to docket the appeal within the 150 day period prescribed by the Rules of Appellate Procedure. The Defendant failed to appear at the hearing on the motion to dismiss.

10. Following the dismissal of the appeal, the Defendant took no action to reinstate his client's appeal.

11. The Defendant intentionally failed to file proposed records on appeal in the 1980 cases before or after they were due.

12. On August 23, 1984, the Defendant suffered the appeals in the 1980 cases to be dismissed by the Superior Court on motion of the adverse parties for failure to file proposed records on appeal as required by the Rules of Appellate Procedure. The

Defendant failed to appear at the hearing on the motions to dismiss.

13. Following the dismissal of the appeals, the Defendant took no action to reinstate his clients' appeals.

14. The Defendant intentionally failed to file a proposed record on appeal in the 1979 case and, on August 23, 1984, suffered that appeal to be dismissed by the Superior Court on motion of the adverse parties for failure to file a proposed record on appeal as required by the Rules of Appellate Procedure. The Defendant failed to appear at the hearing on the motion to dismiss.

15. Following the dismissal of the appeal, the Defendant took no action to reinstate his client's appeal.

16. The adverse parties' motions to dismiss in all cases were scheduled to be heard on August 20, 1984. The motion in the 1976 case was calendared in High Point before the Honorable Edward K. Washington. The motions in the 1979 and 1980 cases were calendared in Greensboro before the Honorable John B. Lewis. The Defendant was supposed to appear for his clients at those hearings.

17. On the morning of August 20, 1984, prior to the opening of court, May received a telephone call from the Defendant who said that he was in Charleston, South Carolina and would not be able to appear in Greensboro or High Point for the Postons. He further told May that he had recently spoken to the attorneys for the opposing parties, James W. Miles (the 1979 and 1980 cases) and William Miller (the 1976 case), who had agreed to withdraw their motions to dismiss.

18. Also on the morning of August 20, 1984, prior to the opening of court, the Defendant called James W. Miles and William Miller. He informed each of them that the Postons would not be opposing the motions to dismiss. Neither Miles nor Miller indicated any intention to withdraw their motions. The Postons had never instructed the Defendant to abandon any of their rights to appeal.

19. The Defendant's conflicting statements were presented to Judge Lewis on the morning of August 20, 1984, by May and Donald Bogan, James W. Miles' partner. May then asked for a continuance of the 1979 and 1980 cases and his motion was denied.

20. On or about November 1, 1984, the Plaintiff received a grievance from Janice E. Poston accusing the Defendant of the misconduct alleged in the first four causes of action.

21. On or about November 26, 1984, the Chairman of the Grievance Committee, Rivers D. Johnson, Jr., sent the Defendant a formal Letter of Notice pursuant to §12(2) of the Rules of

Discipline and Disbarment. With the Letter of Notice, Mr. Johnson enclosed a Substance of Grievance, which summarized the grievance. These documents were served upon the Defendant by certified mail on or about November 29, 1984.

22. The Defendant did not respond to the Letter of Notice within 15 days of service as required by §12(3) of the Rules of Discipline and Disbarment. The Defendant has not, as of the filing of this action, filed any response to the Letter of Notice.

23. On or about March 28, 1985, in order to compel a response from the Defendant, the Chairman of the Grievance Committee issued a subpoena to the Defendant commanding him to appear before the Grievance Committee at the State Bar office in Raleigh on April 10, 1985, to testify concerning this grievance. The subpoena was sent to the Defendant by certified mail but was not received by the Defendant until April 17, 1985. The Defendant did not appear at the Grievance Committee meeting.

24. On or about May 22, 1985, and June 17, 1985, Counsel for the Plaintiff telephoned the Defendant and requested a response to the Letter of Notice. On both occasions the Defendant promised to forward a response. As alleged above, the Defendant has failed to make any response.

Based upon the foregoing FINDINGS OF FACT, the Committee makes the following CONCLUSIONS OF LAW:

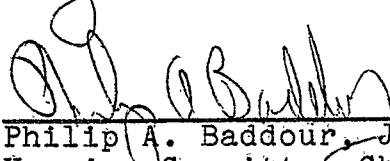
1. The Defendant, by failing to perfect his clients' appeals, neglected legal matters entrusted to him, intentionally failed to seek the lawful objectives of his clients through reasonably available means, intentionally failed to carry out a contract of employment entered into with clients for professional services, and intentionally prejudiced his clients during the course of the professional relationship in violation of Disciplinary Rules 6-101(A)(3), and 7-101(A)(1), (2), and (3), respectively, of the North Carolina Code of Professional Responsibility.

2. The Defendant, by misrepresenting to his co-counsel that counsel for the adverse parties had agreed to withdraw their motions to dismiss and by misrepresenting to counsel for the adverse parties that their motions to dismiss would not be opposed, engaged in conduct involving dishonesty, deceit, and misrepresentation, engaged in professional conduct that adversely reflects on his fitness to practice law, and knowingly made false statements of fact in violation of Disciplinary Rules 1-102(A)(4) and (6) and 7-102(A)(5), respectively, of the North Carolina Code of Professional Responsibility;

3. The Defendant, by failing to respond to the Letter of Notice, engaged in professional conduct which adversely reflects upon his fitness to practice law and failed to answer a formal

inquiry of the North Carolina State Bar in a disciplinary matter in violation of Disciplinary Rule 1-102(A)(6) of the North Carolina Code of Professional Responsibility and North Carolina General Statute §84-28(b)(3), respectively.

This the 23 day of January, 1986.

  
Philip A. Baddour, Jr.  
Hearing Committee Chairman  
(For the Committee)