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NORTH CAROLINA

WAKE COUNTY

FILED

1979 DEC 13 PM 3:37

B.E. JAMES, SEC.
THE N.C. STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
79 DHC 12

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
-vs-)
JOE C. WEATHERSPOON, Attorney,)
Defendant.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

THIS CAUSE was heard before the undersigned Hearing Committee of The Disciplinary Hearing Commission of The North Carolina State Bar on Friday, November 2, 1979, in the Offices of The North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, North Carolina. The North Carolina State Bar was represented by Harold D. Coley, Jr. and the Defendant was represented by Claude V. Jones. The Hearing Committee, after considering Stipulations entered into between the parties, and statements from counsel for Plaintiff and Defendant, makes the following Findings of Fact:

1. 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 in Chapter 84 of the General Statutes of North Carolina.

2. The Defendant, Joe C. Weatherspoon, is a citizen and resident of Durham County, North Carolina, and was admitted to the North Carolina State Bar in September, 1955, and is, and was at all times relevant to this proceeding, an attorney at law licensed to practice in the State of North Carolina and is subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and the laws of the State of North Carolina.

3. A duly verified Complaint, setting forth the charges against the Defendant, was filed in the office of The North Carolina State Bar on August 6, 1979. Notice thereof was given to the Defendant, together with notice that this matter will be heard by a Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar, at a time and place to be determined by the Chairman of said Committee, by personal service upon the Defendant a copy of the Complaint, Summons and Notice, on August 9, 1979.

4. On August 24, 1979, the Chairman of the Disciplinary Hearing Commission notified Counsel for the State Bar and Defendant of the composition of the Hearing Committee and of the time and place for the Hearing.

5. An Answer to the Complaint was filed in the office of The North Carolina State Bar on October 10, 1979, and an Amended Answer on October 15, 1979.

6. During the month of July 1977 Mr. Robert Carpenter visited the offices of the Defendant and delivered to him a suitcase containing various bills, receipts, and other documents pertaining to a claim which Mr. Carpenter contended he had against his deceased sister's estate; these documents were delivered shortly after Mr. Carpenter had discharged his previous attorney, A. A. McDonald; upon leaving the office of the Defendant, Mr. Carpenter assumed that he had employed the Defendant to represent him in the matter; Defendant had advised Mr. Carpenter that he required a \$500.00 retainer. However, said retainer was not paid by Mr. Carpenter; thereafter, as a result of conversations between the Defendant and A. A. McDonald, the previously employed attorney, Mr. McDonald delivered to the Defendant a draft of a Complaint and Summons which he had prepared; upon delivery of said Summons and Complaint to Defendant's office, Defendant read said Complaint, signed it and the Summons and thereafter McDonald filed it on behalf of the Defendant in the Clerk's Office in the Durham County Courthouse (Case No. 77-CvS-1666).

7. On September 1, 1977, Attorney Roger Upchurch filed an Answer and Counterclaim in the case (77-CvS-1666) on behalf of the estate of Mr. Carpenter's sister; a copy of the Answer and Counterclaim was served on Mr. Carpenter and on the Defendant by Mr. Upchurch pursuant to the Rules of Civil Procedure. No reply or other pleading was filed by the Defendant in response to said Counterclaim; thereafter, "Entry of Default" was granted by the Clerk on October 11, 1977 and a Judgment of Default was entered on October 19, 1977 by Judge James H. Pou Bailey against Robert Carpenter in the sum of SEVENTY-EIGHT THOUSAND EIGHT HUNDRED SIXTY-FIVE DOLLARS AND THIRTY-FIVE CENTS (\$78,865.35).

UPON THE FOREGOING FINDINGS OF FACT, THE HEARING COMMITTEE MAKES THE FOLLOWING CONCLUSIONS OF LAW:

A. The conduct of the Defendant as set forth above constitutes a violation of North Carolina General Statute 84-28(b) (2), in that he neglected a legal matter entrusted to him by failing to respond to the Answer and

Counterclaim served upon ^{JMB} ~~his~~ ^{him as} ~~attorney~~ ^{WOC} for Robert Carpenter, in violation of
Disciplinary Rule 6-101(A) (3) of the Code of Professional Responsibility
of The North Carolina State Bar.

This the 6th day of December, 1979.

J. Mac Boxley
J. Mac Boxley, Chairman
Disciplinary Hearing Committee

Phillip I. Ellen
Phillip I. Ellen

William Owen Cooke
William Owen Cooke

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Defendant.)

ORDER

THE HEARING COMMITTEE having found the facts and made conclusions of law in the above-entitled action

IT IS NOW, THEREFORE, ORDERED:

1. That the Defendant, Joe C. Weatherspoon, be disciplined under the provision of North Carolina General Statutes ^{gmb, woc pte} 84-28(c) (4), to wit: a Private Reprimand, and that the Letter of Reprimand be prepared by the Chairman of the Disciplinary Hearing Commission and delivered to the Secretary of The North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, North Carolina, and thereafter served on the Defendant as provided by law. A copy of said Reprimand shall be filed with the Secretary of The North Carolina State Bar.

2. That the costs of this disciplinary action be paid by the Defendant, Joe C. Weatherspoon.

This the 6th day of December, 1979.

J. Mac Boxley
J. Mac Boxley, Chairman
Disciplinary Hearing Committee

Phillip Y. Ellen
Phillip Y. Ellen

William Owen Cooke
William Owen Cooke