

NORTH CAROLINA **FILED**
WAKE COUNTY 1978 MAR 17 PM 12:58
B.E. JAMES, SEC.
THE N. C. STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
78DHCL

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
vs.)
)
JAMES LAWRENCE SMITH, Attorney,)
)
Defendant.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause coming on to be heard and being heard before the undersigned Hearing Committee of The Disciplinary Hearing Commission of The North Carolina State Bar at a regularly scheduled hearing held on March 17, 1978 in the office of The North Carolina State Bar, 107 Fayetteville Street Mall, Raleigh, North Carolina, and said Hearing Committee having heard the evidence and arguments and contentions of counsel, make 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.
2. The Defendant, James Lawrence Smith, is a citizen and resident of Buncombe County, North Carolina and was admitted to The North Carolina State Bar in 1973 and is, and was at all times relevant to this proceeding, an attorney at law licensed to practice law in the State of North Carolina and was 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. On or about April 5, 1977, Mrs. Mary Lou Shipman retained the Defendant to prosecute a criminal action in the Henderson County District Court against Gary Tilson and

Patricia Ann Hunter for felonious attempted breaking and entering and paid the Defendant the sum of \$300.00 for the services. The cases were calendared for probable cause hearing on April 19, 1977 and prior to court date, a continuance was obtained by defendants Hunter and Tilson. Defendant Smith was present in Court on that date. The cases were again calendared for May 19, 1977. Mrs. Shipman went to court prepared to try the case. Defendant did not appear and did not personally contact the Presiding District Court Judge or the Assistant District Attorney. The cases were handled by the District Attorney without the services of Defendant Smith. The case against Patricia Ann Hunter was dismissed by the prosecutor and a misdemeanor trespass plea was taken on the Gary Tilson case.

4. Defendant appeared as counsel for a client who was a defendant in Buncombe County at the jury trial of the case of Young v. Anders and began jury selection on May 18, 1977, and tried the case on May 19, 1977 from 9:30 a.m. through approximately 4:30 p.m. of the same date.

5. Mrs. Shipman then contacted Defendant Smith and requested the return of the \$300.00 fee she had paid Defendant in advance. Defendant refused.

6. Mrs. Shipman sued Defendant in Magistrate's Court for return of the fee and obtained a Judgment for \$150.00 from which Defendant appealed to District Court. Hearing was held in District Court and on the 27th of February, 1978, Judge C. Walter Allen ordered that Mrs. Shipman recover the sum of \$300.00 from Defendant.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE HEARING COMMITTEE CONCLUDES that the conduct of the Defendant as set forth above constitutes a violation of Chapter 84, Section 28(b) (2) of the General Statutes of North Carolina, in that:

a. Defendant failed to act competently by neglecting the legal matter entrusted to him when he failed to appear in

court as he had been paid to do and he failed to make proper arrangements for continuance of Mrs. Shipman's case, in violation of Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility of The North Carolina State Bar;

b. Defendant intentionally failed to seek the lawful objectives of his client, Mrs. Shipman, when unable to appear at the trial of her case he failed to make proper arrangements for a continuance, in violation of Disciplinary Rule 7-101(A)(1) of the Code of Professional Responsibility of The North Carolina State Bar;

c. Defendant intentionally failed to carry out a contract of employment entered into with Mrs. Shipman for professional services when unable to appear at the trial of her case he failed to make proper arrangements for continuance, in violation of Disciplinary Rule 7-101(A)(2) of the Code of Professional Responsibility of The North Carolina State Bar.

This the 17th day of March, 1978.

Emery B. Denny, Jr.
Emery B. Denny, Jr., Chairman

Ralph C. Gingles, Jr.
Ralph C. Gingles, Jr.

R. Powell Majors
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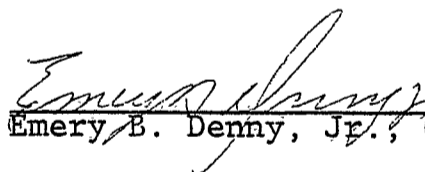
ORDER

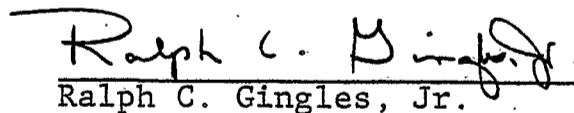
Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to Section 9 of Article IX, Discipline and Disbarment of Attorneys, the undersigned Hearing Committee of The Disciplinary Hearing Commission hereby issues the following Order:

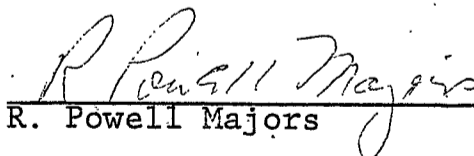
IT IS HEREBY ORDERED that the Defendant, James Lawrence Smith, be issued a private reprimand in writing by the Chairman of the Disciplinary Hearing Commission.

IT IS FURTHER ORDERED that James Lawrence Smith be taxed with the costs of this hearing.

This the 17th day of March, 1978.


Emery B. Denny, Jr., Chairman


Ralph C. Gingles, Jr.


R. Powell Majors