

NORTH CAROLINA STATE BAR
04 DHC 23

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

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, Peter Mack, Jr. (hereinafter, Mack), was admitted to the North Carolina State Bar on August 20, 1993 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, Mack actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Havelock, Craven County, North Carolina.
4. On September 23, 2002, Norman Froscher (hereinafter, Froscher) filed a petition for fee dispute resolution with the North Carolina State Bar pursuant to 27 NCAC 1D, §.0700 *et seq.* (2002). Froscher's fee dispute petition was designated file number 02FD0472.
5. By letter dated September 23, 2002, Luella C. Crane (hereinafter, Crane) of the State Bar's Client Assistance Program advised Mack of Froscher's petition, sent Mack a copy of the

petition, and notified Mack of his responsibility to respond to the petition within 15 days of receipt of Crane's letter.

6. Mack received Crane's September 23, 2002 letter by certified mail on September 30, 2002.

7. Mack failed to respond to Crane's September 23, 2002 letter.

8. By letter dated November 18, 2002, Crane reminded Mack of his duty to respond to Froscher's petition and asked him to respond within ten days of receipt of Crane's letter.

9. Mack received Crane's November 18, 2002 letter by certified mail on November 21, 2002.

10. Mack failed to respond to Crane's November 18, 2002 letter by the December 1, 2002 deadline. However, in a letter to Crane dated December 12, 2002, Mack indicated that he would respond to Froscher's petition prior to December 28, 2002.

11. Mack failed to make a further response to Crane's November 18, 2002 letter.

12. By letter dated February 11, 2003, Crane again reminded Mack of his duty to respond to Froscher's petition and again asked him to respond within ten days of receipt of Crane's letter.

13. Mack did not receive Crane's February 11, 2003 letter by certified mail until February 27, 2003.

14. On February 28, 2003, after not getting a response to her February 11, 2003 letter, and without waiting for the certified mail receipt to be returned to the State Bar, Crane closed the fee dispute file and referred Mack to the disciplinary department at the State Bar.

15. On February 28, 2003 a grievance file was opened against Mack and assigned file number 03G0398.

16. On March 10, 2003, pursuant to 27 NCAC 1B, §.0112(b), the Chair of the Grievance Committee sent Mack a letter of notice accompanied by a substance of the grievance.

17. Mack received the letter of notice and its attachment by certified mail on March 20, 2003.

18. Pursuant to 27 NCAC 1B, §.0112(c), Mack was required to respond to the letter of notice within fifteen days of receipt.

19. Mack failed to respond to the letter of notice within 15 days.

20. On April 11, 2003, a follow-up letter was sent to Mack by regular mail reminding him of his duty to respond to the letter of notice and asking him to respond by April 23, 2003.

21. Mack didn't respond to the letter of notice until May 7, 2003. With that response, Mack included a letter he sent to Crane dated March 20, 2003 that was received after the fee dispute file was closed.

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 Mack and the subject matter.

2. Mack's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) as follows:

- (a) By failing to timely respond to Crane's notices to respond to Froscher's fee dispute petition sent on September 23, 2002, November 18, 2002 and February 11, 2003, Mack failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (b) By failing to timely respond to the letter of notice received by him on March 20, 2003 and the follow-up letter sent to him on April 11, 2003, Mack failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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. The hearing committee finds that there are no aggravating factors present in this case.
- 2. Mack's misconduct is mitigated by the following factor:
 - (a) absence of a prior disciplinary offense;
 - (b) absence of a dishonest or selfish motive;
 - (c) personal problems during the relevant period of time;
 - (d) cooperative attitude toward the proceedings;

(e) good character and reputation; and

(f) remorse.

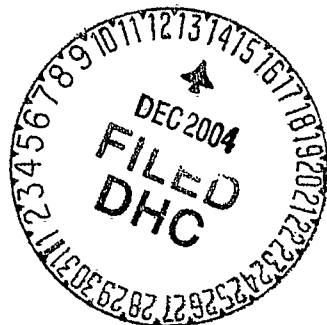
3. In the absence of aggravating factors, the mitigating factors weigh against a reprimand or other severe discipline, even though Mack's conduct caused harm to the State Bar's attempt to resolve Mack's client's fee dispute and caused harm because the matter had to be resolved by the disciplinary process.

Signed by the undersigned Chair with the knowledge and consent of the other members of the hearing committee this 15th day of December 2004.



W. Steven Allen, Sr., Chair
Hearing Committee

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 23

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

PETER MACK, JR., Attorney,
Defendant

ADMONITION

On November 19, 2004, a hearing committee of the Disciplinary Hearing Commission composed of W. Steven Allen, Sr., Chair, T. Richard Kane and Johnny A. Freeman considered the allegations made in the Complaint filed against you on May 12, 2004 in the above referenced disciplinary proceeding. The hearing committee's Findings of Fact, Conclusions of Law and Order of Discipline are being entered contemporaneously with this Admonition.

The hearing committee found that you had violated some of the Revised Rules of Professional Conduct, and ordered that you be admonished. This document constitutes that Admonition.

An Admonition is a written form of discipline issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct, but the conduct does not require a reprimand.

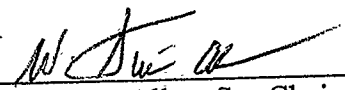
On September 23, 2002, your client, Norman Froscher, filed a fee dispute petition with the State Bar. You were notified of the fee dispute and asked to respond to the petition within 15 days. You failed to respond. On November 18, 2002 and February 11, 2003, you were reminded of your duty to respond to the petition. You failed to timely respond to the petition. Your failure to respond to the fee dispute petition violated Revised Rules 1.5(f) and 8.4(d).

After not getting a response to the fee dispute, the State Bar opened a grievance file. You were sent a letter of notice in the grievance on March 10, 2003. You failed to respond to the letter of notice within 15 days as required by the rules. On April 11, 2003, you were reminded of your duty to respond and asked to respond by April 23, 2004. You failed to respond before May 7, 2003. Your failure to timely respond to the grievance violated Revised Rules 8.1(b) and 8.4(d).

The hearing committee of the Disciplinary Hearing Commission hereby admonishes you for your professional misconduct. The hearing committee hopes that you will heed this admonition, that it will be remembered by you, that it will be beneficial to you, and that you will

never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

Issued this the 10th day of December 2004.



W. Steven Allen, Sr., Chair
Hearing Committee