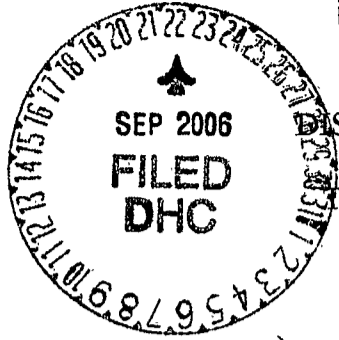


29160

NORTH CAROLINA

WAKE COUNTY



BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 06 DHC 14

NORTH CAROLINA STATE BAR, Plaintiff

v.

RONALD E. COOLEY, Attorney, Defendant

Findings of Fact, Conclusions of Law and Consent Order of Discipline

This matter was considered by a Hearing Committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair, and members John M. May and R. Mitchell Tyler. Katherine E. Jean represented plaintiff, the North Carolina State Bar. Ernest Jay Reeves, Jr. represented defendant, Ronald E. Cooley. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, this Hearing Committee hereby finds the following by clear, cogent, and convincing evidence:

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, Ronald E. Cooley ("Cooley"), was admitted to the North Carolina State Bar on August 18, 2000, 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all or a portion of the periods referred to herein, Cooley was actively engaged in the private practice of law in Hillsborough, Orange County, North Carolina.

4. On October 6, 2004, Joan Jones ("Jones") retained Cooley to represent her in a domestic case and paid Cooley a \$500 retainer.

614

5. Cooley signed a Retainer and Fee Agreement which provides that the \$500 is "nonrefundable" and is "fully earned when agreement to accept case is reached."

6. Cooley and Jones agreed that Cooley would file a lawsuit on Jones' behalf on or before October 11, 2004.

7. By November 7, 2004, Cooley had not prepared and filed Jones' complaint.

8. Cooley told Jones he wouldn't do further work on her behalf until she made payment on her bill.

9. Jones terminated the attorney-client relationship and demanded return of her retainer.

10. Cooley refused to refund any portion of the retainer, telling Jones she owed "over \$500" for legal services rendered after the retainer was exhausted and telling her that, according to a fee agreement, the retainer was "nonrefundable."

11. Jones filed a petition for resolution of disputed fee with the State Bar.

12. Cooley received written notice of the fee dispute petition on December 16, 2004.

13. Cooley did not respond within 15 days as the notice instructed him to do.

14. Cooley received the second/final notification of mandatory fee dispute resolution on January 5, 2005.

15. In his January 6, 2005, written response to the second/final notification of mandatory fee dispute resolution, Cooley indicated Jones owed him "\$720 plus interest to date."

16. In his February 25, 2005 response to follow-up questions sent by the State Bar's Client Assistance Program ("CAP") representative, Luella Crane ("Crane"), Cooley said Jones then owed him \$959 and said that "[b]y your office delaying the collection of what I am owed, you are increasing the interest she owes and increasing the fees for collection activities related to her account."

17. An invoice produced with Cooley's February 25, 2005 letter, contains entries charging Jones fees for time spent participating in the Bar's mandatory fee dispute resolution program.

18. On March 8, 2005, Crane sent a letter to Cooley requesting clarification of the invoice. Cooley did not respond to Crane's March 8, 2005, letter.

19. On July 15, 2004, Charles Anderson ("Anderson") retained Cooley to represent him in an employment matter.

20. Anderson paid Cooley a \$1000 retainer.

21. Cooley and Anderson did not have a written fee agreement explaining how the \$1000 retainer would be applied.

22. Anderson believed that the \$1000 would be applied to pay for legal services rendered by Cooley in the future.

23. Cooley later contended that the \$1000 was a flat fee.

24. When he was retained by Anderson, Cooley had not previously represented Anderson.

25. Cooley did not clearly communicate to Anderson the basis or rate of the fee and expenses for which Anderson would be responsible.

26. Cooley represented Anderson at a July 15, 2004 meeting.

27. One of the services Cooley agreed to perform was to send a demand letter to Anderson's former employer.

28. By July 29, 2005, Anderson had provided all information Cooley requested for preparation of the demand letter.

29. Anderson telephoned Cooley on numerous occasions between July 15, 2004 and September 24, 2004, inquiring about the status of the demand letter and reiterating the need to send the demand letter right away.

30. Cooley did not respond to Anderson's telephone calls.

31. As of September 24, 2004, Cooley had not completed the demand letter.

32. Anderson terminated the attorney-client relationship on September 24, 2004 and requested return of the \$1000 retainer.

33. On October 15, 2004, Cooley provided a written response to Anderson's request for return of the retainer, disputing Anderson's allegations of delay, acknowledging termination of the attorney-client relationship, stating that Anderson owed an additional "\$1800+," and stating:

If you feel the need to file a Bar complaint, do as you feel obligated. What I have done in this case violates no ethical rules of the NC Bar and I am quite sure they will agree. Then again, the only matter open I see for you to refer to them would be your account, and if you would like to get their take on your outstanding balance, do so. Once they determine you owe me for the hours I worked on your case, I will expect a check. Even though I may be willing to walk away from some of this debt now, I will not if I have to waste my time answering Bar letters as they tend to piss me off and my life has enough stress in it already. Per the terms of

our retainer, I would also be adding whatever time I am forced to expend in collecting what is owed.

34. On December 7, 2004, Anderson filed a small claims action seeking recovery of the \$1000 retainer.

35. In the small claims action, Cooley did not assert a counterclaim for recovery of additional fees.

36. The magistrate dismissed Anderson's small claims action.

37. On March 14, 2005, Cooley wrote a letter to Luella Crane stating, in part, "Please confirm whether it is still true that once an account has been heard in court that the client assistance fee dispute program has no jurisdiction."

38. On May 3, 2005, Cooley wrote to Luella Crane stating in part "Please answer my initial letter as to whether you have jurisdiction over this bill based on previous court action."

39. Cooley then wrote to Anderson demanding payment of \$2373.89 and stating "[y]ou would ordinarily have a right to refer this matter to the NC Bar Fee Dispute Resolution Program if you believe you can show I am overcharging you per the terms of your retainer. Since you have already chosen to go to court on this account, this program may not be available to you."

40. Cooley's representations set forth in finding of fact 39 are false and misleading and were made for the purpose of discouraging Anderson from filing a fee dispute petition.

41. Anderson filed a petition for mandatory fee dispute resolution with the State Bar's CAP program.

42. In response to the fee dispute petition, Cooley produced an invoice showing a balance owed of \$2373.89, \$1010.85 of which was billed for time spent preparing for and appearing at the small claims hearing and \$22.50 of which was billed for time spent writing a letter to Anderson demanding payment of legal fees.

43. Cooley told Crane "[i]f you stall the resolution of this collection, as I have experienced with your office in the past, the net result will be an increase in what he owes."

44. On March 14, 2005, Cooley represented to Crane that the small claims magistrate "ruled that my billing was proper and that [Anderson] had to pay what was owed on his account."

45. Cooley's representation set forth in finding of fact 44 was false.

46. Cooley represented to Crane that the \$1010.85 he sought to recover from Anderson was for "collection activities," which Cooley asserted his "Retainer and Fee Agreement" permitted him to recover from Anderson.

47. Cooley's representation set forth in finding of fact 46 was false.

48. Crane wrote to Cooley again, asking Cooley to forego the charges for time spent on the small claims case.

49. Cooley did not respond and thereafter participated no longer in the mandatory fee dispute resolution process.

50. On April 15, 2005, the Grievance Committee of the State Bar opened grievance file #05G0736 against Cooley.

51. In his written response to plaintiff's Letter of Notice, addressed to the Chair of the State Bar's Grievance Committee, Henry Babb ("Babb"), Cooley incorporated by reference the false representation set forth in finding of fact 44.

52. Cooley's attempt to collect \$1010.85 from Anderson is an attempt to collect an illegal and clearly excessive fee.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over defendant, Ronald E. Cooley, and over the subject matter.

2. Cooley's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and (3) as follows:

- (a) By failing to respond to a direct request for clarification from Crane, Cooley failed to participate in good faith in the State Bar's mandatory fee dispute resolution program in violation of Rule 1.5(f) of the Revised Rules of Professional Conduct;
- (b) By increasing the amounts of the purported fee he was attempting to recover from Jones for the time spent participating in the State Bar's mandatory fee dispute process, Cooley failed to participate in good faith in the fee dispute program in violation of Rule 1.5(f) and attempted to charge an illegal and clearly excessive fee in violation of Rule 1.5(a) of the Revised Rules of Professional Conduct;
- (c) By representing in his Retainer and Fee Agreement and in his response to Jones' request for a refund that Jones was paying a \$500 "nonrefundable" retainer which was "fully earned when agreement to accept case is reached,"

Cooley made a false and misleading representation in violation of Rule 7.1 of the Revised Rules of Professional Conduct.

- (d) By failing to respond to Crane's communications in the fee dispute process, Cooley failed to participate in good faith in the State Bar's fee dispute resolution program in violation of Rule 1.5(f) of the Revised Rules of Professional Conduct;
- (e) By making false representations to Crane and to Babb regarding the magistrate's ruling in the small claims action and by representing that \$1010.85 of his invoice was for "collection activities," Cooley failed to participate in good faith in the State Bar's mandatory fee dispute program in violation of Rule 1.5(f), made false representations of material fact in violation of Rule 8.1(a), and failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).
- (f) By representing to Anderson that his filing a small claims action might make him ineligible to participate in the State Bar's fee dispute resolution program, and by attempting to discourage Anderson from filing a petition for resolution of the disputed fee, Cooley failed to participate in good faith in the State Bar's mandatory fee dispute resolution program in violation of Rule 1.5(f) of the Revised Rules of Professional Conduct;
- (g) By failing to respond to Anderson's inquiries about the status of Anderson's legal matter, Cooley failed to keep Anderson reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a) of the Revised Rules of Professional Conduct.

Based upon the stipulations of fact and the consent of the parties, the Hearing Committee hereby makes, by clear, cogent, and convincing evidence, the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

- 1. Cooley's misconduct is aggravated by the following factors:
 - a. Cooley committed multiple offenses;
 - b. Cooley engaged in a pattern of misconduct;
- 2. Cooley's misconduct is mitigated by the following factors:
 - a. Cooley has no prior discipline;

3. The aggravating factors outweigh the mitigating factors.
4. Cooley has significantly harmed the reputation and standing of the legal profession and has caused substantial harm and potential harm to his clients, Jones and Anderson.
5. Cooley's failure to cooperate and failure to provide, full, fair and timely responses to the State Bar's CAP program and to the Grievance Committee have interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.
6. This Hearing Committee has considered all alternatives and finds that a public reprimand is appropriate and sufficient discipline given the gravity of the harm and of the potential harm caused by the misconduct of Cooley and given the aggravating and mitigating factors found above.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

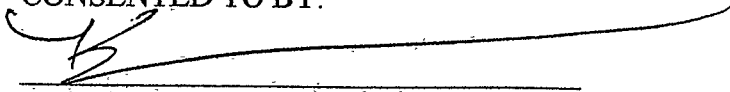
1. Cooley is hereby reprimanded for his misconduct.
2. Cooley shall pay the costs of this proceeding as assessed by the Secretary within ninety (90) days of the date this disciplinary order is served upon him.

Signed by the Chair with the consent of the other hearing committee members,
this the 22nd day of September, 2006.

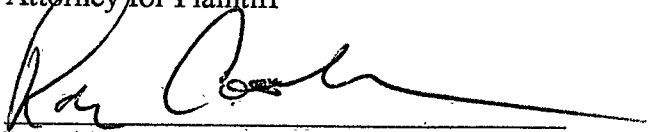


Stephen E. Culbreth
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:



Katherine E. Jean
Interim Co-Counsel
Attorney for Plaintiff



Ronald E. Cooley.
Defendant



Ernest Jay Reeves, Jr.
Attorney for Defendant