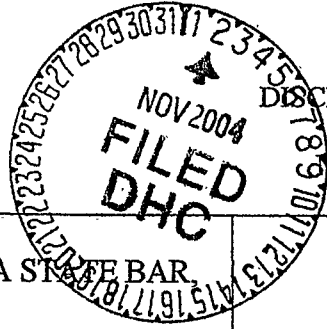


18076

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 5

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PHILLIP R. BATTEN, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND CONSENT ORDER
OF DISCIPLINE

This matter came before a hearing committee of the Disciplinary Hearing Commission composed of the Chair, Charles M. Davis and members Karen Eady-Williams and Johnny A. Freeman. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Defendant represented himself. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Further, by entering into this consent order of discipline, Defendant freely and voluntarily consents to the order of discipline, waives a formal hearing in this case, and waives all right to appeal this order or challenge in any way the sufficiency of the findings, the conclusions, or the discipline imposed. Based upon the consent of the parties, the hearing committee hereby enters 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, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Phillip R. Batten ("Defendant"), was admitted to the North Carolina State Bar in 1991, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Defendant was suspended from the active practice of law pursuant to Disciplinary Hearing Commission Disciplinary Order issued in case number 01 DHC 19 dated December 20, 2001.

4. Defendant was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

5. On February 27, 2002 the State Bar received a Petition for Resolution of Disputed Fee from Joanne Dancy regarding Defendant's representation of Cecil Wadkins.

6. On or about April 24, 2002 Defendant received notice of the Petition for Resolution of Disputed Fee. Defendant was required to respond in writing within ten (10) days of receipt. Defendant did not provide a written response to the Petition for Resolution of Disputed Fee as required.

7. As a result of Defendant's failure to participate in the fee dispute process, a grievance file was opened. A letter of notice was sent to Defendant in that file, to which Defendant timely responded. A request for additional information was made to Defendant regarding his representation of Cecil Wadkins. Defendant did not supply that additional information.

8. Consequently, on July 16, 2003 the Secretary of the North Carolina State Bar issued a subpoena duces tecum to Defendant, commanding him to appear on July 31, 2003 before The North Carolina State Bar and to bring specified documents relating to his representation of Cecil Wadkins.

9. Defendant was personally served with the subpoena at his residence by sheriff on July 22, 2003.

10. Defendant failed to appear at The North Carolina State Bar on July 31, 2003 and did not comply with the subpoena or the State Bar's request for information.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Phillip R. Batten, and the subject matter.

2. The Defendant'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 the notice of a petition for fee dispute resolution by Dancy, Defendant failed to participate in good faith with the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f); and

b. By failing to appear in response to the State Bar's subpoena, Defendant failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and engaged in contempt of the State Bar in violation of N.C. Gen. Stat. § 84-28(b)(3).

Based upon the consent of the parties, the hearing committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendants' misconduct is aggravated by the following factors:
 - a. Prior discipline, to wit: Defendant's license was suspended for three years by an Order of Discipline in 01 DHC 19 for misappropriation, failing to keep a client reasonably informed, knowingly making a false statement of material fact to a tribunal, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and counseling a witness to testify falsely. The effective date of the prior discipline was January 27, 2002, before the misconduct in the current matter;
 - b. Pattern of misconduct;
 - c. Multiple offenses; and
 - d. Substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factors:
 - a. Absence of a dishonest or selfish motive;
 - b. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings;
3. The aggravating factors outweigh the mitigating factors.
4. The Order of Discipline imposed in 01 DHC 19 required Defendant to comply with the Revised Rules of Professional Conduct. Defendant has failed to do so.
5. Defendant's failure to participate in mandatory fee arbitration and failure to comply with the subpoena from the State Bar interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.
6. Entry of an order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would be inconsistent with orders of discipline entered by this body in similar cases and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

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

ORDER OF DISCIPLINE

1. Defendant, currently suspended from the practice of law under the Order of Discipline in 01 DHC 19, is hereby further suspended from the practice of law as follows: the law license of Defendant, Phillip F. Batten, is suspended through July 31, 2006.

2. Defendant shall pay the costs of this proceeding as assessed by the Secretary within 30 days of service of the statement of costs upon him.

3. Defendant shall continue to comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules.

4. To be eligible for reinstatement at the end of the suspension imposed in this Order, Defendant must satisfy the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the North Carolina Discipline and Disability Rules, must have satisfied the terms for reinstatement listed in 01 DHC 19, and must comply with the following conditions for the duration of the suspension imposed in this Order:

a. Defendant shall not violate any of the Revised Rules of Professional Conduct;

b. Defendant shall not violate any laws of the State of North Carolina or of the United States;

c. Defendant shall have paid all costs of this proceeding as assessed by the Secretary within 30 days of service of the statement of costs upon him;

d. Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home address;

e. Defendant shall respond to all communications from the North Carolina State Bar received after the effective date of this order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;

f. Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension;

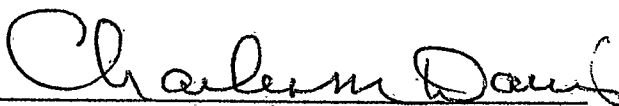
g. Defendant shall participate in the North Carolina State Bar's fee dispute resolution process for any subsequent petition received after the effective

date of this order, participate in good faith and refund all fees that are determined to be subject to refund by the mediation process; and

h. Defendant shall refund Joanne Dancy the \$1,500 advance fee she paid Defendant for Defendant to represent Cecil Wadkins prior to any application for reinstatement.

5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members, this the 26 day of October, 2004.



Charles M. Davis
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:



Jennifer A. Porter
Deputy Counsel
Attorney for Plaintiff.



Phillip R. Batten
Defendant