

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILED

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
82 DHC 10  
82 DHC 11

1982 DEC -6 AM 9:03  
B.E. JAMES, SEC.  
THE N.C. STATE BAR

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

CHARLES E. VICKERY, ATTORNEY AT LAW,  
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on Friday, November 5, 1982, and Thursday, November 18, 1982. The Plaintiff was represented by David R. Johnson. The record in the cause showed that Defendant's default was entered by entry of default dated September 14, 1982; that the Defendant appeared on November 5, 1982 and on November 18, 1982, and was represented by Barry T. Winston and M. Bays Shoaf; and that the Defendant's motion to set aside the entry of default was denied by Order of the Hearing Committee made in open court. Thereupon, the Plaintiff applied to the Hearing Committee for an Order Imposing Discipline pursuant to Rule 14(6) of the Discipline and Disbarment Rules of The North Carolina State Bar and the Hearing Committee makes 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) The Defendant, Charles E. Vickery, was admitted to The North Carolina State Bar on October 6, 1970, and is and was at all times referred to herein an Attorney at Law licensed to practice law in The State of North Carolina subject to the rules, regulations, and canons of ethics and Code of Professional Responsibility of The North Carolina State Bar and to the laws of the State of North Carolina.

3) At and during all of the times hereinafter referred to, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Chapel Hill, Orange County, North Carolina.

With respect to the First Claim for Relief in 82 DHC 10 the Hearing Committee makes the following FINDINGS OF FACT:

4) Charles E. Vickery, the Defendant was employed to represent one Frank D. Thomas, Sr. to pursue remedies concerning "post-conviction relief" following Thomas' criminal conviction in Guilford County file number 79 CRS 54489. The possible remedies to be explored by the Defendant included a Motion for Appropriate Relief, a transfer to another prison, or a change in status at the prison.

5) At the time the Defendant was employed, Thomas was incarcerated in Central Prison in Raleigh as a result of a plea of guilty to charges of second degree murder in Guilford County file number 79 CRS 54489.

6) The Defendant received \$2,500.00 from Thomas' wife, Pansy C. Thomas to secure the Defendant's representation. Payment was made to the Defendant during the summer of 1981.

7) In November, 1981, the Defendant wrote to Thomas and advised him that there would be a court hearing on a Motion for Appropriate Relief by the end of February, 1982.

8) The Defendant failed to file any "Motion for Appropriate Relief" on any other action in Guilford County file number 79 CRS 54489.

9) The Defendant failed to take any action on behalf of Thomas.

10) In March, 1982, the Defendant was discharged by Thomas and demand was made for return of the \$2,500.00 paid to the Defendant.

11) The Defendant failed and refused to return any money to Thomas or his wife.

With respect to the Second Claim for Relief in 82 DHC 10 the Hearing Committee makes the following additional FINDINGS OF FACT:

12) On April 16, 1982, Frank Thomas, Sr. filed a Grievance against the Defendant in the Offices of The North Carolina State Bar.

13) On May 25, 1982, the Defendant received a Letter of Notice issued by the Chairman of the Grievance Committee concerning the Grievance filed by Thomas. The Letter of Notice was issued under §12(2) of the Discipline and Disbarment Rules of The North Carolina State Bar and required the Defendant to respond with a "full and fair disclosure of all of the facts and circumstances" concerning the Thomas Grievance within 15 days pursuant to §12(3) of the Disciplinary Rules.

14) The Defendant failed to respond to the Letter of Notice.

With respect to the first Claim for Relief in 82 DHC 11 the Hearing Committee makes these FINDINGS OF FACT:

15) On March 15, 1981, Hal E. Wilson, was issued a citation charging him with entering an intersection while a stop light was emitting a steady red light for traffic in his direction of travel in violation of North Carolina General Statute §20158. The citation directed Mr. Wilson to appear in court in Dunn, North Carolina on April 15, 1981 at 9:30 a.m.

16) On March 16, 1981, Mr. Wilson consulted with the Defendant and paid the Defendant \$127.00 to handle the case by check #119 drawn on Mr. Wilson's account at Wachovia Bank & Trust Co., N.A.

17) The Defendant endorsed check #119 payable to him in blank and presented it for payment at the Northwestern Bank on March 17, 1981.

18) The court appearance was continued until April 29, 1981.

19) Prior to the scheduled court date, Mr. Wilson contacted the Defendant who advised Mr. Wilson that his appearance in court was not necessary on April 29, 1981.

20) Relying on the Defendant's advice, Mr. Wilson did not attend court in Dunn, North Carolina on April 29, 1981.

21) The Defendant did not appear in court in Dunn, North Carolina on April 29, 1981, move for a continuance, or otherwise protect the interests of Hal Wilson.

22) An order for arrest was issued against Mr. Wilson for his failure to appear on May 5, 1981. Mr. Wilson had to post a \$100.00 cash bond to secure his release from custody as a result of the order for arrest. A court appearance was set for July 15, 1981, after the cash bond was posted.

23) Prior to July 15, 1981, court date, Mr. Wilson's father, Ivan D. Wilson, talked with the Defendant, who advised Ivan Wilson that there was no need for Hal Wilson to appear in court on July 15, 1981.

24) On July 15, 1981, the Defendant did not appear in court in Dunn, North Carolina, move for a continuance, or otherwise protect the interest of Hal Wilson. Ivan Wilson attended court and, after learning that the case against Hal Wilson was still on the court calendar, talked with the Assistant District Attorney who agreed to a continuance for one week.

25) Ivan Wilson attempted to reach the Defendant on two occasions following court on July 15, 1981. The Defendant could not be reached by Ivan Wilson.

26) Hal Wilson retained another attorney, Mike McLeod, in Dunn, North Carolina. On August 19, 1981, Hal Wilson was acquitted of the traffic offense.

27) On September 3, 1981, Ivan Wilson demanded a refund of the \$127.00 paid to the Defendant and reimbursement of expenses.

28) The Defendant failed to communicate with or refund to either Ivan Wilson or Hal Wilson the \$127.00 paid to the Defendant on March 16, 1981.

With respect to the Second Claim for Relief in 82 DHC 11 the Hearing Committee makes the following additional FINDINGS OF FACT:

29) On October 23, 1981, Hal Wilson and Ivan Wilson filed a grievance against the Defendant with the Grievance Committee of The North Carolina State Bar.

30) On November 28, 1981, the Defendant received a Letter of Notice from the Chairman of the Grievance Committee issued pursuant to Section 12(2) of the Discipline and Disbarment Rules of The North Carolina State Bar. Under Section 12(3) of the Discipline and Disbarment Rules the Defendant was required to respond to the Letter of Notice within 15 days giving a full and fair disclosure of all of the facts and circumstances of the grievance filed by the Wilsons.

31) The Defendant failed to respond within the time period set out in the rule.

32) On December 30, 1981, a followup letter was sent to the Defendant from the Office of Counsel of The North Carolina State Bar requesting a response to the Chairman's Letter of Notice.

33) The Defendant failed to respond to the follow-up letter.

34) On March 24, 1982, the Defendant was served with a Subpoena to Produce Documents or Objects issued by the Chairman of the Grievance Committee under Section 12(5) of the Discipline and Disbarment Rules of The North Carolina State Bar which required the Defendant's attendance before the Grievance Committee on April 14, 1981.

35) The Defendant failed to appear pursuant to the subpoena.

Based upon the foregoing FINDINGS OF FACT, the Hearing Committee makes the following CONCLUSIONS OF LAW regarding the First Claim for Relief in 82 DHC 10:

1) The Defendant engaged in conduct constituting grounds for discipline under N. C. Gen. Stat. § 84-28(a) and (b) in that: (a) By failing to file any appropriate action on behalf of Frank Thomas, Sr. in Guilford County or otherwise after being employed to do so and being paid \$2,500.00, the Defendant neglected a legal matter entrusted to him; intentionally failed to seek the lawful objectives of his client; intentionally failed to carry out the contract of employment; and intentionally prejudiced or damaged his client in violation of Disciplinary Rules 6-101(A)(3) and 7-101(A)(1), (2), and (3), respectively, of the Code of Professional Responsibility of The North Carolina State Bar. (b) By failing to refund any or all of the \$2,500.00 paid to him, the Defendant withdrew from employment without refunding that part of the fee paid in advance and had not been earned; failed to promptly pay his client those funds in the Defendant's possession which the client was entitled to receive;

engaged in conduct involving deceit or dishonesty and misrepresented that the fee had been earned; and engaged in professional conduct adversely reflecting the Defendant's fitness to practice law in violation of Disciplinary Rule 2-110(A)(3), 9-102(B)(4), and 1-102(A)(4) and (6), respectively, of the Code of Professional Responsibility of The North Carolina State Bar.

With respect to the Second Claim for Relief in 82 DHC 10 the Hearing Committee makes the following CONCLUSIONS OF LAW:

2) The Defendant engaged in conduct constituting grounds for discipline under N. C. Gen. Stat. §84-28(a) and (b)(2) and (3) in that failing to respond to the Letter of Notice of the Chairman, the Defendant failed to respond to a formal inquiry of The North Carolina State Bar and engaged in professional conduct adversely reflecting on his fitness to practice law in violation of, respectively, N. C. Gen. Stat. §84-28(a)(3) and Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility of The North Carolina State Bar.

With respect to the First Claim for Relief in 82 DHC 11 the Hearing Committee makes the following CONCLUSIONS OF LAW:

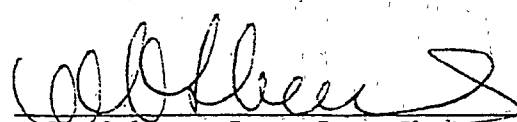
3) The Defendant engaged in conduct constituting grounds for discipline under N. C. Gen. Stat. §84-28(a) and (b)(2) in that: (a) By failing to attend court on either April 29, 1981, or July 15, 1981, move or a continuance, or otherwise protect the interest of Hal Wilson, the Defendant neglected a legal matter entrusted to him; intentionally failed to seek the lawful objectives of his client; intentionally failed to carry out a contract of employment; intentionally prejudiced or damaged his client; and engaged in conduct prejudicial to the administration of justice in violation of Disciplinary Rules 6-101(A)(3), 7-101(A)(1), (2), (3), and 1-102(A)(5), respectively, the Code of Professional Responsibility of The North Carolina State Bar. (b) By failing to communicate with Ivan or Hal Wilson after July 15, 1981 and by failing to attend court

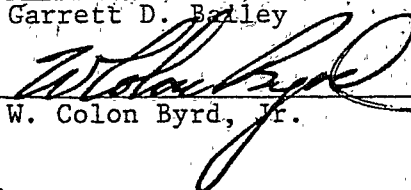
on either April 29, 1981, or July 15, 1981, move for a continuance, or otherwise protect the interest of Hal Wilson, the Defendant neglected the legal matter entrusted to him and withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client in violation of Disciplinary Rules 6-101(A)(3) and 2-110(A), respectively, the Code of Professional Responsibility of The North Carolina State Bar. (c) By failing to refund the \$127.00 paid to him on March 16, 1981, the Defendant withdrew from employment without refunding that part of the fee paid in advance that had not been earned; failed to promptly pay to his client those funds in the Defendant's possession which the client was entitled to receive; engaged in conduct involving deceit or dishonesty; engaged in professional conduct adversely reflecting on the Defendant's practice law in violation of Disciplinary Rules 2-110(A)(3), 9-102(B)(b), 1-102(A)(4) and (6), respectively of the Code of Professional Responsibility of The North Carolina State Bar.

With respect to the Second Claim for Relief in 82 DHC 11 the Hearing Committee makes the following CONCLUSIONS OF LAW:

4) The Defendant engaged in conduct constituting grounds for discipline under N. C. Gen. Stat. §84-28(a) and (b)(2) and (3) in that by failing to respond to either the Letter of Notice and by failing to appear pursuant to the subpoena the Defendant failed to respond to a formal inquiry of The North Carolina State Bar and engaged in professional conduct adversely reflecting on his fitness to practice law in violation, respectively, of N. C. Gen. Stat. §84-28(b)(3) and Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility of The North Carolina State Bar.

This the 22<sup>nd</sup> day of November, 1982.

  
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W. Osborne Lee, Jr., Chairman

Garrett D. Bailey  
  
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W. Colon Byrd, Jr.

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COUNTY OF WAKE

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THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

CHARLES E. VICKERY, ATTORNEY AT LAW,  
Defendant.

ORDER IMPOSING DISCIPLINE

This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on Friday, November 5, 1982, and on Thursday, November 18, 1982. Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause and the evidence presented relevant to the discipline to be imposed, including all aggravating and mitigating evidence, the Hearing Committee enters the following ORDER IMPOSING DISCIPLINE:

- 1) The Defendant is hereby suspended from the practice of law for a period of two years commencing thirty days after service of this Order upon the Defendant or affirmation of this Order on appeal or Order dismissing any appeal.
- 2) The Defendant shall surrender his license and membership card to the Secretary of The North Carolina State Bar who will maintain them in his possession for the duration of the suspension.
- 3) The costs of the proceedings shall be taxed to the Defendant.
- 4) The Defendant shall pay to Frank D. Thomas, Sr. the sum of \$2500.00.

5) The Defendant shall pay to Hal E. Wilson the sum of \$208.87.

6) The Defendant will comply with the rules of The North Carolina State Bar governing the winding up of his practice upon suspension, refrain from the practice of law during the period of suspension, and not be convicted of any crime which would constitute grounds for discipline during the period of suspension.

The above Order is SUSPENDED on the following CONDITIONS:

1) The Defendant is suspended from the practice of law for a period of six months commencing thirty days after service of this Order upon the Defendant or affirmation of this Order upon appeal or Order dismissing any appeal.

2) The Defendant shall surrender his license and membership card to the Secretary of The North Carolina State Bar who will maintain them in his possession for the duration of the suspension.

3) The costs of the proceedings shall be taxed to the Defendant.

4) The Defendant shall pay to Frank E. Thomas, Sr. the sum of \$2500.00.

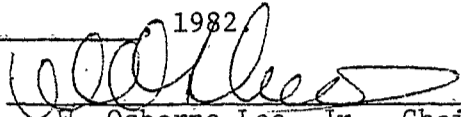
5) The Defendant shall pay to Hal E. Wilson the sum of \$208.87.

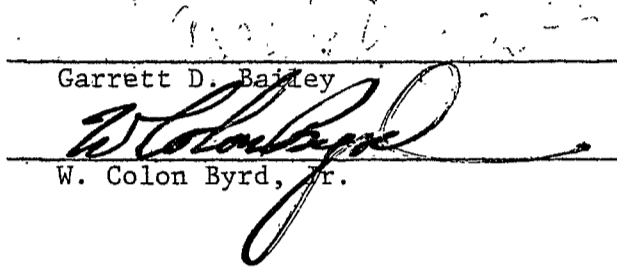
6) The Defendant will comply with the rules of The North Carolina State Bar governing the winding up of his practice, refrain from the practice of law during the period of suspension, and not be convicted of any crime which would constitute grounds for discipline during the period of suspension.

7) The Defendant will obtain regular counselling from a psychiatrist licensed to practice medicine in the State of North Carolina and the psychiatrist shall certify to The North Carolina State Bar the Defendant's compliance with the regular treatments suggested or prescribed by such physician. The certificate of the psychiatrist must be submitted to The

North Carolina State Bar no less than fifteen days prior to the expiration of the six month period of suspension.

This the 22<sup>nd</sup> day of November 1982

  
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W. Osborne Lee, Jr., Chairman

  
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Garrett D. Bailey  
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W. Colon Byrd, Jr.