

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

1982 NOV -8 AM 8:28
82 DHC 12

B.E. JAMES, SEC.
THE N. C. STATE BAR

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

TIMOTHY E. OATES, ATTORNEY,
Defendant.

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SETTLEMENT AGREEMENT AND
CONSENT ORDER

Pursuant to Rule 14(8) and (9) of the Discipline and Disbarment Rules of The North Carolina State Bar, the parties have entered into a settlement agreement that is hereby tendered to the Hearing Committee. The Defendant has entered into this agreement freely and voluntarily with the advice of counsel. It is understood by the Defendant that the Hearing Committee has the right under Rule 14(8) to review and reject or approve any settlement agreement reached by the parties. Under the settlement agreement the parties stipulate to the following facts and recommend that these facts should be adopted by the Hearing Committee as the 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, Timothy E. Oates, was admitted to The North Carolina State Bar in August 26, 1977, 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, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and of 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 Durham, Durham County, North Carolina.

4. The Disciplinary Hearing Commission has subject matter jurisdiction to hear this matter and has personal jurisdiction over the Defendant.

5. In 1979, William F. Faught, employed the Defendant, Timothy E. Oates, to represent him in pending domestic litigation styled as Faught v. Faught, 79 CvD 1637, Durham County, with respect to which William F. Faught was the named Defendant.

6. On November 19, 1979, during the course of Defendant's representation of William F. Faught, there was a non-jury trial of the action before the Honorable David Q. LaBarre, District Court Judge. The Defendant was present at the trial and represented William F. Faught.

7. On December 27, 1979, a judgment was entered by the Court in 79 CvD 1637 requiring, among other things, the payment of permanent alimony by William F. Faught to his wife, Donna Laper Faught.

8. On January 4, 1980, at the request of his client, William F. Faught, the Defendant gave Notice of Appeal from said judgment.

9. On March 5, 1980, the appeal was ordered dismissed by the Court. An appeal of this Order was taken by the Defendant on behalf of William F. Faught to the Court of Appeals.

10. On February 17, 1981, the North Carolina Court of Appeals rendered a decision reinstating the appeal with respect to the District Court's Order of December 27, 1979. The opinion of the North Carolina Court of Appeals directed that the District Court of Durham County enter an Order providing that the Defendant, William F. Faught, be given sixty (60) days from the date

of said Order in which to prepare and serve a Proposed Record on Appeal; that the Plaintiff have thirty (30) days thereafter to prepare and serve an alternate Record on Appeal, and that the Final Record on Appeal must be filed with the North Carolina Court of Appeals within one hundred fifty (150) days of the entry of such Order.

11. On March 4, 1981, pursuant to and consistent with the mandate of the North Carolina Court of Appeals, Appeal Entries were entered by the District Court giving the Defendant, William F. Faught, sixty (60) days from that date in which to prepare and serve a Proposed Record on Appeal, the Plaintiff, Donna Laper Faught, thirty (30) days thereafter in which to approve said Proposed Record, serve objections thereto, or serve a Proposed Alternate Record on Appeal, and the Defendant one hundred fifty (150) days from the date of the Order to docket the Final Record on Appeal with the North Carolina Court of Appeals.

12. On May 4, 1981, the Defendant, William F. Faught, served his Proposed Record on Appeal on the Plaintiff, Donna Laper Faught.

13. On June 2, 1981, the Plaintiff, Donna Laper Faught, served a Proposed Alternate Record on Appeal on the Defendant, William F. Faught.

14. The Defendant, Timothy E. Oates, thereafter failed to file on behalf of his client a written request, pursuant to Rule 11(c) of the North Carolina Rules of Appellate Procedure, with the District Court requesting that the presiding judge settle the Record on Appeal.

15. The Defendant, Timothy E. Oates, also failed to file on behalf of his client a Final Record on Appeal with the North Carolina Court of Appeals within the one hundred fifty (150) day period specified by the Court of Appeals and ordered by the District Court on March 4, 1981.

16. On September 16, 1981, after letting the time for perfecting the Appeal expire, the Defendant, Timothy E. Oates, filed a Notice of Voluntary Dismissal in the District Court of Durham County wherein he purported to dismiss his client's appeal before the North Carolina Court of Appeals. This action was taken without the knowledge or consent of the Defendant's client who desired to pursue the appeal and was relying upon the Defendant to do so. The Defendant, Timothy E. Oates, knew of his client's desire and expectation and deliberately acted to defeat the purpose of his client by filing said Notice of Voluntary Dismissal.

17. On October 5, 1981, the Appeal of the Defendant's client in 79 CvD 1637, William F. Faught, was dismissed upon Motion of the Plaintiff by order of the District Court.

BASED UPON the foregoing facts, the Defendant hereby stipulates, admits, and agrees to the following CONCLUSIONS OF LAW:

1. The Disciplinary Hearing Commission has personal jurisdiction and subject matter jurisdiction to enter an Order in this matter.
2. The conduct of the Defendant constitutes grounds for discipline pursuant to North Carolina General Statute §84-28(b) (2) in that:

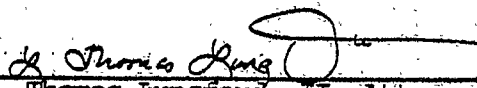
The Defendant, by failing to perfect the appeal of his client in the aforesaid manner and by filing a paperwriting which purported to dismiss his client's appeal without the client's knowledge or consent against his well-known wishes, engaged in professional conduct that adversely reflects upon his fitness to practice law in violation of Disciplinary Rule 1-102(A) (6) of the Code of Professional Responsibility of The North Carolina State Bar; neglected a legal matter which had been entrusted to him in violation of Disciplinary Rule 6-101(A) (3) of the Code of Professional Responsibility of The North Carolina State Bar; failed to seek the lawful objectives of his client through reasonably available means permitted by law in violation of

of Disciplinary Rule 7-101(A) (1) of the Code of Professional Responsibility of The North Carolina State Bar; failed to carry out a contract of employment entered into with a client for professional services in violation of Disciplinary Rule 7-101(A) (2) of the Code of Professional Responsibility of The North Carolina State Bar; and prejudiced and damaged his client during the course of the professional relationship in violation of Disciplinary Rule 7-101(A) (3) of the Code of Professional Responsibility of The North Carolina State Bar.

BASED UPON the foregoing the parties have agreed, with the free and voluntary agreement and consent of the Defendant, that the appropriate disposition of the case at bar is that:

1. The Defendant be publicly censured.
2. The Defendant be taxed with the costs of this proceeding.


Agreed to this the 1st day of November, 1982.


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Kande v. Jones
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Timothy E. Oates, Defendant

This agreement is approved by the undersigned Hearing Committee members as a Consent Order, this the 2 day of November, 1982.


Angela R. Bryant, Chairman


Mary Cecile Bridges


Francis O. Clarkson, Jr.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
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82 DHC 12

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B.E. JAMES, SEC.
THE N.C. STATE BAR

THE NORTH CAROLINA STATE BAR,
Plaintiff,

vs.

TIMOTHY E. OATES, ATTORNEY,
Defendant.

PUBLIC CENSURE

This Public Censure is delivered to you pursuant to Section 23 of the Rules of Discipline and Disbarment of The North Carolina State Bar and pursuant to a Settlement Agreement and Consent Order of a Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar in the above entitled proceeding bearing date of November 1, 1982, in which you admitted certain violations of the Code of Professional Responsibility of The North Carolina State Bar which are set forth below.

The fact that this Public Censure is not the most serious discipline provided for in North Carolina General Statute §84-28 should not be taken by you to indicate that The North Carolina State Bar in any way feels that your conduct in this matter was excusable or was considered by the members of the Hearing Committee of the Disciplinary Hearing Commission to be less than a very serious and substantial violation of the Code of Professional Responsibility.

In 1979, you were employed by William F. Faught to represent him in pending domestic litigation. After trial of the matter resulted in a judgment adverse to your client, you were further employed to perfect and fully prosecute an appeal of that judgment. Although you prepared a Proposed Record on Appeal in due time and received shortly thereafter the Appellee's Proposed Alternate Record on Appeal, you failed to request the presiding judge to settle the Record on Appeal. Thereafter you failed to file a Final Record on Appeal with The North Carolina Court of Appeals within the period allotted for such filing, which failure caused

your client's appeal to be subject to dismissal under the Rules of Appellate Procedure.

On September 16, 1981, after expiration of time for filing the Record on Appeal, you filed a Notice of Voluntary Dismissal in the District Court of Durham County wherein you purported to dismiss your client's appeal. Your action was taken without the knowledge or consent of your client who you knew wished to pursue the appeal and was relying upon you to do so.

On October 5, 1981, your client's appeal was dismissed upon motion of the adverse party by the District Court.

By failing to perfect the appeal of your client in the aforesaid manner and by filing a paperwriting which purported to dismiss your client's appeal without his knowledge or consent against his wishes, you engaged in conduct that adversely reflects upon your fitness to practice law, neglected a legal matter that had been entrusted to you, failed to seek the lawful objectives of your client through reasonably available means permitted by law, failed to carry out a contract of employment entered into with a client for professional services, and prejudiced and damaged your client during the course of the professional relationship in violation of Disciplinary Rules 1-102(A) (6), 6-101(A) (3) and 7-101(A) (1), (2), and (3). Your conduct was unprofessional. It violated not only the letter, but also the spirit of the Code of Professional Responsibility of The North Carolina State Bar. It was not such conduct as is expected of a member of the legal profession. It brings discredit upon you and tends to place the courts of this State and your fellow members of the Bar in disrepute and damages both in the eyes of the public.

Failure of attorneys to conduct themselves within the law and within the bounds of the Code of Professional Responsibility is the most serious complaint against our profession, and your failure to keep faith with your client was your error here. You placed your privilege to serve the public as a lawyer in serious jeopardy.

The North Carolina State Bar is confident that this Public Censure will be heeded by you, that it will be remembered by you, and that it will be beneficial to you. We are confident that you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession. Accordingly, we sincerely trust that this Public Censure, instead of being a burden, will actually serve as a profitable reminder to weigh carefully your responsibility to the public, your clients, your fellow attorneys, and the court, with the result that you will be known as a respected member of our profession whose word and conduct may be relied upon without question.

Pursuant to Section 23 of the Rules of Disciplinary Procedure, it is ordered that a certified copy of this Public Censure be entered upon the judgment docket of the Superior Court of Durham County and also upon the minutes of the Supreme Court of North Carolina.

IT IS FURTHER ORDERED that the costs of this disciplinary action be paid by the defendant, Timothy E. Oates, Attorney.

This the 8 day of November, 1982.

Angela R. Bryant
Angela R. Bryant, Chairman
Disciplinary Hearing Committee
For the Committee