

NORTH CAROLINA

WAKE COUNTY

SEP 20 8:45

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 8

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

AIMEE TOTH, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on to be heard and was heard on August 6, 1990 before a hearing committee of the Disciplinary Hearing Commission composed of L. P. Hornthal, Jr., chairman; Sam L. Beam, and Frank E. Emory, Jr. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant was represented by John E. Hall. Based upon the stipulations of the parties and the evidence admitted at the hearing, the committee finds the following facts by clear, cogent and convincing evidence:

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, Aimee Toth, was admitted to the North Carolina State Bar in 1980, 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. The Defendant was engaged in the private practice of law from 1979 until approximately September of 1988 in Statesville, North Carolina. She ceased the active practice of law in September of 1988 when she became engaged in the manufacturing business.
4. On February 1, 1988, James Chambers, filed a complaint against Karen Chambers seeking custody of the parties' children. Mr. Chambers was represented by C. David Benbow, an attorney in Statesville, North Carolina.
5. After receiving the summons and complaint filed by

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Mr. Chambers, Ms. Chambers went to the Defendant and retained her for representation in defending the lawsuit.

6. Ms. Chambers borrowed \$1,000 from her MasterCard account and paid the Defendant the requested attorney's fee of \$1,000 on February 19, 1988.
7. The Defendant filed an answer and counterclaim in Ms. Chambers' case on July 8, 1988.
8. Apart from filing of answer, Defendant had very limited time involved in her representation of Ms. Chambers. Although Mr. Chambers abandoned his pursuit of custody of the children, defendant made no constructive effort to pursue Ms. Chambers' counterclaim.
9. Although Defendant testified she withdrew from the representation on or about September, 1988, she never sought leave of court to withdraw from the representation, nor did she advise Ms. Chambers of the need to secure further representation.
10. While still counsel of record, Defendant suffered the dismissal of Ms. Chambers' counterclaim without notice to Ms. Chambers.
11. The reasonable value of Defendant's services to Ms. Chambers did not exceed \$200.
12. Ms. Chambers demanded return of her fee payment. While Defendant offered at one time to return \$200 of the fee, no part of the fee has been return to date.
13. Defendant did not earn the entire \$1,000 fee and she is legally and ethically obligated to return the unearned portion of the fee in the sum of \$800 to Ms. Chambers.
14. On or about June 27, 1989, the North Carolina State Bar sent the Defendant a Letter of Notice by certified mail, return receipt requested regarding a grievance filed against her by Ms. Chambers. Bill Gill, an employee of the Defendant's manufacturing company (Cap-Star Manufacturing Company) accepted service of the Letter of Notice on June 27, 1989.
15. The Defendant did not respond to the Letter of Notice from the North Carolina State Bar.
16. The North Carolina State Bar sent a follow-up letter to the Defendant on September 13, 1989 by certified mail, return receipt requested. In this letter, the Defendant was reminded of her obligation to respond to the Letter of Notice by September 25, 1989. Bill Gill again accepted service of this letter on September 27, 1989 as

evidenced by his signature on the certified mail return receipt.

17. The Defendant did not respond to the State Bar's follow-up letter.
18. On October 30, 1989, the State Bar issued a subpoena duces tecum to the Defendant. The subpoena duces tecum was sent by certified mail, restricted delivery and the return receipt was signed by Bill Gill on November 7, 1989. The Defendant was ordered to appear before the North Carolina State Bar Grievance Committee on November 21, 1989 to respond to Ms. Chambers' allegations.
19. The Defendant did not respond to the subpoena duces tecum.
20. The Defendant never requested an extension of time to respond to any of the inquiries sent to her by the State Bar.
21. Bill Gill, as an employee of Cap-Star Manufacturing Company, had accepted certified mail on behalf of the Defendant and her company on occasions prior to the notices sent by the State Bar by certified mail to the Defendant.
22. The Defendant failed to rebut the presumption that Bill Gill was an agent of the Defendant authorized by appointment or by law to be served or to accept service of the certified mail which contained the notices from the State Bar regarding Ms. Chambers' grievance. Thus, the Defendant was served with notice of the State Bar's correspondence regarding Ms. Chambers' grievance.

Based upon the following Findings of Fact, the hearing committee makes the following:

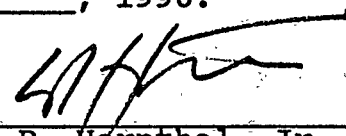
CONCLUSIONS OF LAW

1. By failing to refund the unearned portion of attorney's fees paid by Ms. Chambers, the Defendant has violated Rule 2.8(A)(3).
2. By failing to provide a full and fair response to the Letter of Notice no later than 15 days after receiving it and by failing to respond to the State Bar's follow-up letter regarding the grievance, the Defendant failed to answer a formal inquiry of the North Carolina State Bar in a disciplinary matter in violation of N.C. Gen. Stat. Section 84-23(b)(3) and Rule 1.1(B) and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D).
3. By failing to appear at the North Carolina State

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Bar pursuant to a subpoena duces tecum, Defendant failed to answer a formal inquiry of the North Carolina State Bar in a disciplinary matter in violation of N.C. Gen. Stat. Section 84-28(b)(3) and Rule 1.1(B) and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 5 day of September, 1990.



L. P. Hornthal, Jr.
Chairman

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NORTH CAROLINA
WAKE COUNTY

SEP 8 1990

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 8

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

AIMEE TOTH, ATTORNEY
Defendant

ORDER OF DISCIPLINE

This cause was heard on August 6, 1990 by a duly appointed hearing committee of the Disciplinary Hearing Commission consisting of L. P. Hornthal, Jr., Chairman; Sam L. Beam, and Frank E. Emory, Jr. In addition to the Findings of Fact and Conclusions of Law made following the evidentiary hearing, the hearing committee makes the additional Findings of Fact as follows:

1. The Defendant expressed willingness to return all or part of the \$1,000 attorney fee paid to her if ordered to do so by the Disciplinary Hearing Commission.
2. Two aggravating factors existed: (a) the Defendant refused to acknowledge the wrongful nature of her conduct relative to her failure to respond to the State Bar regarding Ms. Chambers' grievance; and (b) the Defendant had substantial experience in the practice of law at the time she represented Ms. Chambers. The Defendant had substantial experience in the practice of domestic law.
3. Several mitigating factors existed: a) the Defendant has no prior disciplinary record; b) the Defendant's conduct was not motivated by greed or dishonesty; and c) the Defendant has an excellent reputation in the community as evidenced by affidavits presented to the hearing committee.
4. The Defendant ceased the active practice of law without providing proper notice to the North Carolina State Bar as to her current address.

Based upon the Findings of Fact and Conclusions of Law entered in this case and the additional Findings of Facts set forth above, the hearing committee enters the following:

ORDER OF DISCIPLINE

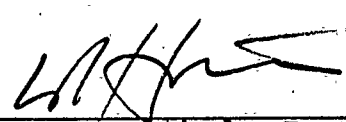
1. The Defendant shall be publicly censured for her

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misconduct.

2. The Defendant shall return promptly to Ms. Chambers the unearned portion of attorney's fee which the hearing committee has determined to be \$800. Ms. Chambers' address is 803 Crestridge Road, Statesville, North Carolina 28677. The Defendant shall notify counsel for the North Carolina State Bar when such payment is made.
3. The Defendant shall notify the State Bar relative to her intention to engage in the practice of law within 30 days of the entry of this order. If the Defendant does not intend to practice law, she should wind up her practice consistent with Section 24 of the Discipline and Disbarment Procedures of the North Carolina State Bar.
4. The Defendant shall pay the cost of this proceeding.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 5 day of September, 1990.



L. P. Hornthal, Jr.
Chairman

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NORTH CAROLINA
WAKE COUNTY

SEP 90 8:45

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 8

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

AIMEE TOTH, ATTORNEY
Defendant

PUBLIC CENSURE

This Public Censure is delivered to you pursuant to Section 23 of Article IX of the Rules and Regulations of the North Carolina State Bar as ordered by a hearing committee of the Disciplinary Hearing Commission following a hearing in the above-captioned proceeding on August 6, 1990. At that hearing, the hearing committee found that you violated various provisions of the Rules of Professional Conduct of the North Carolina State Bar.

In February of 1988, Karen Chambers retained you to defend a lawsuit filed by her husband wherein he sought custody of their children. Ms. Chambers paid you your requested attorney's fee of \$1,000 on February 19, 1988. You filed an answer and counterclaim on behalf of Ms. Chambers on July 1988, five months after the original complaint was filed.

You had very limited time involved in your representation of Ms. Chambers, apart from filing an answer in the case. Although Mr. Chambers abandoned his pursuit of custody of the children, you made no constructive effort to pursue Ms. Chambers' counterclaim. While you were still counsel of record for Ms. Chambers, you allowed the dismissal of her counterclaim without any notice to her. The hearing committee noted your testimony that you withdrew from representation of Ms. Chambers on or about September 1988. However, you never sought leave of court to withdraw from the representation, nor advise Ms. Chambers of the need to secure other counsel.

The hearing committee determined that the reasonable value of your services to Ms. Chambers did not exceed \$200. Ms. Chambers demanded the return of her fee. You offered at one time to return \$200 of the fee, but no part of the fee had been refunded to Ms. Chambers as of the date of the hearing in this matter.

Your failure to refund the unearned portion of the fee paid to you violates Rule 2.8(A)(3) of the North Carolina Rules of Professional Conduct. Rule 2.8(A)(3) provides that "(a) lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned." When an advanced fee is paid to an attorney, the attorney has an ethical

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obligation to keep an account of the number of hours spent providing legal services in the case and to refund any part of the fee which has not been earned at the time the attorney withdraws from the case or is discharged by the client.

On June 27, 1989, the North Carolina State Bar sent you a Letter of Notice by certified mail, return receipt requested, regarding the grievance filed against you by Ms. Chambers. Bill Gill, an employee of your manufacturing company, accepted service of the Letter of Notice on June 27, 1989. You did not respond to the Letter of Notice within 15 days of receiving it.

The North Carolina State Bar then sent a follow-up letter to you on September 13, 1989 by certified mail, return receipt requested. In this letter, you were reminded of your obligation to respond to the Letter of Notice by September 25, 1989. Bill Gill again accepted service of this letter on September 27, 1989 as evidenced by his signature on the certified mail return receipt. The State Bar did not receive a response from you to the follow-up letter.

On October 30, 1989, the State Bar issued you a subpoena duces tecum which required you to appear before the North Carolina State Bar Grievance Committee to respond to Ms. Chambers' grievance. The subpoena was sent by certified mail, restricted delivery and the return receipt was signed by Bill Gill on November 7, 1989. You did not respond to the subpoena duces tecum.

The hearing committee determined that Bill Gill was your agent, authorized by appointment or by law to be served or to accept service of certified mail which contained the notices from the State Bar regarding Ms. Chambers' grievance. Although you contend that you never received the notices from the State Bar, the hearing committee determined that you were served with notice of the grievance.

Your failure to respond to the North Carolina State Bar's formal inquiries violates N.C. Gen. Stat. Sec. 84-28(b)(3), Rule 1.1(B) and Rule 1.2(D) of the North Carolina Rules of Professional Conduct. Your failure to respond to the State Bar is inexcusable. As a licensed attorney in North Carolina, you have an obligation to respond to the North Carolina State Bar's investigation of grievances filed against you. The North Carolina State Bar can carry out its function of discipline and regulation of its members when attorneys cooperate by giving full, fair and prompt responses to the State Bar's inquiries. The Committee was concerned that you failed to acknowledge your errant conduct in not responding to the State Bar. You are advised that the State Bar cannot allow attorneys to undermine its disciplinary process by failing to cooperate with the investigation of grievances filed against them. You are advised that should you ever receive another inquiry from the North Carolina State Bar, you should respond to it with dispatch.

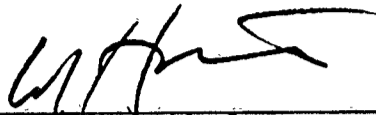
The hearing committee, after hearing all the evidence and character witnesses on your behalf, imposes this Public Censure. The fact that the hearing committee has chosen to impose the sanction of Public Censure should not be taken by you to indicate that the Disciplinary Hearing Commission in any way feels that

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your conduct in this matter was excusable or not serious. The hearing committee is satisfied that you will never again allow yourself to depart from the strict adherence to the highest standards of the legal profession.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 5 day of September, 1990.



L. P. Hornthal, Jr.
Chairman, Hearing Committee

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JUDGMENT
COURT OF APPEALS OF NORTH CAROLINA

No. 9110NCSB103

NORTH CAROLINA STATE BAR

vs.

AIMEE TOTH, ATTORNEY

County

No. 90DHC8

North Carolina State Bar

This cause came on to be argued upon the transcript of the record from the
Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said trial
tribunal

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the

Honorable CLIFTON E. JOHNSON Judge, be certified to the said trial tribunal

to the intent that the JUDGMENT IS AFFIRMED

And it is considered and adjudged further, that the DEFENDANT DO PAY

the costs of the appeal in this Court incurred, to wit, the sum of

***** FIFTY-FIVE AND NO/100 ***** dollars (\$ 55.00),

and execution issue therefor. Certified to North Carolina State Bar this 23rd day of December 19 91

A TRUE COPY

Francis E. Gail
Clerk of the Court of Appeals.