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WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
02 DHC 20

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

BRENDA M. FOREMAN, ATTORNEY
Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW
& ORDER OF DISCIPLINE

THIS MATTER came on to be heard and was heard by a duly appointed committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair; Carlyn G. Poole and Betty Ann Knudsen. Carolin Bakewell represented the North Carolina State Bar. The Defendant, Brenda M. Foreman, did not appear in person or through counsel. Based upon the pleadings and evidence presented herein, the Hearing Committee hereby 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, Brenda M. Foreman (Foreman), was admitted to the North Carolina State Bar in 1976, 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. During all of the periods relevant hereto, Foreman maintained an office for the practice of law in Raleigh N.C.

4. Foreman was served with the State Bar's complaint in this matter in person by the Durham County Sheriff's Department on Dec. 2, 2002.
5. Foreman's answer was due no later than Dec. 23, 2002.
6. Foreman did not file an answer or other responsive pleading, nor did she seek an extension of time in which to respond to the State Bar's complaint.
7. On Jan. 7, 2003, pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §§ .0110(f) and .0114(f), the Secretary of the N.C. State Bar entered Foreman's default in this matter.
8. Following entry of Foreman's default, Foreman was served with notice that the hearing on the question of the appropriate discipline to be imposed would be held on Feb. 28, 2003.
9. On Feb. 27, 2003, Foreman filed a motion requesting that the hearing be continued, which motion was granted.
10. On Feb. 28, 2003, the Clerk of the DHC sent Foreman notice that the hearing on the question of discipline would be held at 10 a.m. on May 16, 2003.
11. Foreman has not filed a motion to set aside the entry of default and has not filed any other motions in this action other than the Feb. 27 motion to continue.
12. In late 1998, Foreman undertook to represent Andre D. Knight (Knight), regarding a dispute with the City of Rocky Mount Board of Adjustment.
13. In 1999, Foreman filed a civil complaint on Knight's behalf against the Rocky Mount Board of Adjustment in Nash County Superior Court and appeared on his behalf.
14. On or about Aug. 17, 2000, the Nash County Superior Court entered its order affirming the decision of the Rocky Mount Board of Adjustment.
15. On or about Oct. 2, 2000, Foreman filed a notice of appeal on Knight's behalf from the Nash County Superior Court to the N.C. Court of Appeals.
16. Foreman failed to perfect the appeal on Knight's behalf.
17. Prior to Dec. 5, 2000, the attorney for the Nash County Board of Adjustment filed a motion to dismiss the appeal.

18. On Dec. 5, 2000, Knight's appeal was dismissed, based upon Foreman's failure to perfect the appeal in compliance with the North Carolina Rules of Appellate Procedure. Foreman did not appear at the hearing on the motion to dismiss, nor did she respond to the motion.

19. Foreman failed to communicate with Knight regarding the appeal and failed to respond to his requests for information.

20. Foreman has failed and refused to refund any portion of the fee which she was paid by Knight.

21. On or about Feb. 15, 2002, Knight filed a grievance against Foreman with the North Carolina State Bar, based upon her failure to perfect the appeal on his behalf.

22. On June 12, 2002, Foreman was personally served with the letter of notice and substance of grievance by the Durham County Sheriff's Department.

23. Pursuant to the N.C. State Bar's Discipline & Disability Rules, Foreman's response to the letter of notice was due no later than June 28, 2002.

24. Foreman did not obtain an extension of time in which to answer the letter of notice regarding Knight's grievance.

25. Foreman did not respond in any fashion to the letter of notice regarding Knight's grievance.

In addition the foregoing Findings of Fact, based upon the evidence introduced at hearing, the Hearing Committee enters the following

ADDITIONAL FINDINGS OF FACT RELEVANT TO DISCIPLINE

26. On March 12, 2003, the Plaintiff served Foreman with a notice of deposition, scheduling her deposition for 10 am. March 24, 2003. The notice was sent by regular mail to Foreman's business and home addresses.

27. The notice of deposition sent to Ms. Foreman's home address was not returned to the State Bar.

28. Foreman did not appear for her deposition.

29. The N.C. State Bar incurred \$140 in costs as a result of Foreman's failure to appear at her duly noticed deposition.

30. On Feb. 28, 2003, the N.C. State Bar served Foreman with its First Interrogatories and First Request to Produce Documents. The discovery requests were sent to Foreman's business address.

31. In March 2003, the State Bar's discovery requests were returned to the State Bar with a notation that Foreman had closed her business post office box.

32. On April 4, 2003, the State Bar's investigator, Don Jones, contacted Foreman by telephone and asked her to provide the State Bar with a current address. Foreman declined to give Jones an address on April 4, but promised to come by the State Bar on April 7 and provide a new address.

33. Foreman did not appear at the State Bar on April 7, did not provide the Bar with a valid address and did not file any responses to the State Bar's discovery.

34. On Feb. 7, 2003, the 10th Judicial District Bar notified Foreman that a fee dispute petition has been filed against her by a former client, Cynthia Harper. The notice was sent to Foreman's business address by certified mail and was returned as unclaimed by Foreman.

35. An additional notice concerning the fee dispute petition was sent to Foreman at her business address by regular mail on Feb. 19, 2003. This letter was not returned.

36. Foreman did not respond to the notice of Ms. Harper's fee dispute petition nor did she participate in the mandatory fee dispute process as required by Rule 1.5(f) of the Revised Rules of Professional Conduct.

37. Foreman has failed to comply with the State Bar's regulations concerning mandatory continuing legal education.

38. Foreman's violations of the Revised Rules of Professional Conduct are aggravated by the following factors:

- a. Foreman has engaged in a pattern of misconduct which occurred over a period of at least three years.
- c. Foreman has violated multiple provisions of the Revised Rules of Professional Conduct.
- d. Foreman has failed to make any restitution to her client.
- e. Foreman has substantial experience in the practice of law.

f. Foreman failed to cooperate with the N.C. State Bar in any way and has failed to show remorse.

39. Foreman's misconduct is mitigated by the following factors:

a. Foreman has no prior discipline.

40. The aggravating factors substantially outweigh the mitigating factors.

Based on the foregoing Findings of Fact, the hearing committee hereby enters the following:

CONCLUSIONS OF LAW

1. By failing to perfect the appeal from the order of the Nash County Superior Court on behalf of her client, Andre Knight, Foreman neglected her client's case in violation of Rule 1.3 of the Revised Rules of Professional Conduct.

2. By failing to communicate effectively with Knight and by failing to respond to his inquiries about his case, Foreman failed to keep her client reasonably informed about the status of his case, in violation of Rule 1.4 of the Revised Rules of Professional Conduct.

3. By failing to refund the unearned portion of the fee which she was paid by Knight, Foreman retained and/or collected an excessive fee in violation of Rule 1.5.

4. By failing to respond to the letter of notice regarding Andre Knight's grievance, Foreman failed to respond to a lawful demand for information from a disciplinary authority, in violation of Revised Rule 8.1(b).

5. Foreman's misconduct caused significant harm to her client in that Knight was denied the opportunity to pursue his appeal against the City of Rocky Mount Board of Adjustment as a result of Foreman's failure to perfect an appeal on his behalf, which harmed his standing in the community.

6. Foreman's misconduct has also caused actual harm to the standing of the legal profession by undermining her client's trust and confidence in lawyers and the legal system.

7. Foreman's failure to respond to the State Bar's letter of notice and her failure to participate in mandatory fee arbitration undermine the State Bar's ability to regulate attorneys and undermine the privilege of lawyers in this state to remain self-regulating.

8. An order calling for discipline short of a suspension of Foreman's law license with appropriate conditions precedent for reinstatement would not sufficiently protect the public for the following reasons:

- a. Foreman engaged in multiple violations of the Revised Rules of Professional Conduct over a lengthy period of time, as opposed to an isolated act or mistake, and it therefore appears that her misconduct is the result of some problem or personality defect that is not readily changeable.
- b. Foreman failed to provide any assurances that she has addressed whatever problem or character flaw caused her misconduct and therefore there is a substantial risk that her misconduct would be repeated if she is permitted to continue to practice law.
- c. Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses which Foreman committed, 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.
- d. The protection of the public requires that Foreman not be permitted to resume the practice of law until she demonstrates that she understands her ethical obligations to her clients, and demonstrates that she is not suffering from any addiction or mental illness or condition that prevents her from practicing law competently.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Relevant to Discipline, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of the Defendant, Brenda M. Foreman, is hereby suspended for 3 years. After serving 12 months of the active suspension of her license, Foreman may apply for reinstatement upon filing a petition with the Secretary of the N.C. State Bar demonstrating the following:

- a. That she paid the costs of this proceeding within 30 days of service of the order upon her.
- b. That she obtained a medical evaluation within 6 months of the effective date of this order by a psychiatrist approved by the N.C. State Bar and complied with all treatment recommendations of the psychiatrist during the period of the

active suspension of her law license. The medical evaluation shall be obtained at Foreman's expense and shall provide that she is not disabled or suffering from any mental or physical condition or ailment that prevents her from practicing law competently.

- c. That, not less than 30 days before filing the petition to stay the remaining period of the suspension of her law license, she provided a written release to the North Carolina State Bar authorizing the Office of Counsel to speak with the psychiatrist who performed the evaluation and to obtain copies of her medical records from the psychiatrist.
- d. That she has kept the N.C. State Bar Membership Department advised of her current business and home address.
- e. That she has responded to all communications from the N.C. State Bar within 30 days of receipt or the deadline stated in the communication, whichever is sooner.
- f. That she has not violated the Revised Rules of Professional Conduct or the laws of the United States or of any state.
- g. That she properly wound down her law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disbarment Rules.
- h. That she paid all past due membership fees, penalties and fines owed to the State Bar and has become current with all mandatory continuing legal education requirements.
- i. That she participated in the State Bar's fee dispute resolution process in good faith and refunded all fees the mediator determined were owed.

2. If Foreman successfully seeks a stay of the suspension of her law license, such stay will continue in force only so long as she complies with the conditions set out in ¶ 1 (d) – (f) and (h) – (i) above.

3. If Foreman does not seek a stay of the active portion of the suspension of her law license or if some part of the suspension is stayed and thereafter the stay is revoked, Foreman must comply with the conditions set out in ¶ 1 (a) – (i) before seeking reinstatement of her license to practice law.

Signed by the Chair of the Hearing Committee with the knowledge and consent of the other Committee members.

This the 23rd day of June 2003.

M. Ann Reed

M. Ann Reed, Chair
Disciplinary Hearing Committee