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WAKE COUNTY
NORTH CAROLINA

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

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
WILLIAM C. STUART III, ATTORNEY)
Defendant)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on the 21 day of May, 1999, before a hearing committee of the Disciplinary Hearing Commission composed of Franklin E. Martin, Chair; Kenneth M. Smith and Robert B. Frantz. The defendant, William C. Stuart III, did not appear and was not represented by counsel at the hearing. Plaintiff was represented by Douglas J. Brocker. Based upon the allegations in plaintiff's complaint, which are deemed admitted by the entry of default against defendant, and based on the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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, William C. Stuart, III, (hereafter "Stuart"), was admitted to the North Carolina State Bar on August 19, 1978 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 the times relevant to this complaint, Stuart engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Raleigh, Wake County, North Carolina.

4. Sometime between February and September 1996, Gerald C. Wrenn (hereafter "Wrenn") retained Stuart.

5. Wrenn retained Stuart to represent him in a lawsuit filed in Carteret County Superior Court, I.T. Bagley v. Gerald Wrenn, file number 94-CVS-761 (hereafter "lawsuit").

6. Stuart filed an answer and counterclaim for Wrenn in the lawsuit on September 26, 1996.

7. After filing the counterclaim, Stuart took no action to advance the claim, such as obtaining supporting evidence through discovery.

8. On November 7, 1996, Senior Resident Superior Court Judge James E. Ragan, III entered an order requiring the parties to participate in a mediated settlement conference no later than February 28, 1997.

9. The plaintiff's attorney in the lawsuit, Neil B. Whitford (hereafter "Whitford"), attempted to contact Stuart on many occasions to arrange the mediated settlement conference but Stuart never responded to Whitford.

10. As a result of Stuart's failure to respond to Whitford, no mediated settlement conference could be scheduled or completed prior to the February 28, 1997 deadline or prior to the scheduled trial date of May 27, 1997.

11. Between February and May 1997, the Trial Court Administrator for Carteret County, William W. Nicholls, sent Stuart an initial trial calendar, a pretrial calendar, and a final trial calendar setting the lawsuit for trial on May 27, 1997. Those calendars were sent to the address on record with the North Carolina State Bar and the one Stuart provided the Court.

12. Whitford and Nicholls made numerous attempts to contact Stuart before May 27, 1997 but Stuart never responded to their calls.

13. Stuart failed to appear at the May 27, 1997 Trial Session of Carteret County Superior Court.

14. Wrenn appeared and stated that he had not been able to contact Stuart.

15. The presiding Judge, the Honorable Ernest B. Fullwood (hereafter "Judge Fullwood"), directed court personnel to contact Stuart, but they were unable to locate him.

16. As a result of Stuart's failure to appear at the trial session, the lawsuit was continued, and Wrenn had to hire another attorney to represent him.

17. Whitford subsequently filed a motion for sanctions against Wrenn and a motion to dismiss Wrenn's counterclaim in February 1998.

18. While the motion for sanctions was still pending, Wrenn, acting pro se, dismissed his counterclaim with prejudice on February 23, 1998.

19. Judge Fullwood filed a grievance with the North Carolina State Bar against Stuart for his failure to appear at the May 27, 1997 Trial Session of Carteret County Superior Court.

20. Stuart was served on August 18, 1997 with a Letter of Notice directing him to respond to Judge Fullwood's grievance within 15 days.

21. Stuart sent a letter to the State Bar dated September 1, 1997 acknowledging receipt of the Letter of Notice but requesting a copy of the substance of grievance.

22. The State Bar sent Stuart a letter dated September 8, 1997 enclosing a copy of the Substance of Grievance and asking him to respond to Judge Fullwood's grievance by September 29, 1997. Stuart failed to respond to the original Letter of Notice or the September 8, 1997 letter.

23. The State Bar sent Stuart another letter asking him to respond to Judge Fullwood's grievance by October 13, 1997. Stuart failed to respond to this letter.

24. The Chair of the Grievance Committee issued a subpoena to Stuart on November 4, 1997 requiring him to appear at the State Bar offices on November 18, 1997 and bring all relevant documents relating to Judge Fullwood's grievance.

25. The Wake County Sheriff's Department was not able to serve Stuart with this subpoena until December 2, 1997.

26. The State Bar issued another subpoena to Stuart on January 9, 1998 requiring him to appear at the State Bar offices on January 15, 1998 and bring all relevant documents relating to Judge Fullwood's grievance.

27. The State Bar was unable to serve Stuart with this second subpoena because he had vacated his apartment where he had previously been served. Stuart

left no forwarding address. The State Bar was unable to locate Stuart again, despite reasonable efforts, including contacting family members and former professional acquaintances.

28. Stuart never responded to Judge Fullwood's grievance nor contacted the State Bar even though he received the Letter of Notice, the follow-up letters and the first subpoena.

29. Stuart was served with the summons and complaint in this matter, as well as the State Bar's Motion for Order requiring Examination of Defendant. Stuart was served in person with these documents on March 18, 1999 at his place of employment -- A Pantry store in Myrtle Beach, South Carolina -- by Ken Thrasher. Thrasher is authorized to serve process in South Carolina.

30. Stuart also was served with the Order Assigning Hearing Committee and Setting Hearing, A Motion for Default, Grounds for Personal Jurisdiction, Default, and Motion for Order of Discipline. Stuart was served in person with these documents on April 21, 1999 at his residence in Myrtle Beach, South Carolina by Ken Thrasher.

31. Stuart was served on May 13, 1999 with the Order Substituting Panel Member and Changing Location of the Hearing. Stuart was served at his residence by Ken Thrasher.

32. The North Carolina State Bar Council suspended Stuart's license to practice law for non-payment of his 1997 and 1998 dues (hereafter "Administrative Suspension"). The Administrative Suspension Order was entered by the State Bar Council on April 23, 1999 and was effective immediately upon entry. Stuart was served with a copy of the Administrative Suspension Order on May 17, 1999 in person at his residence by Ken Thrasher.

33. Stuart is delinquent in child support payments to his ex-wife, Leta Doyle, in an amount exceeding \$14,000. Stuart repeatedly has taken steps to avoid and evade making any child support payments to Ms. Doyle.

34. Evidence was presented at the hearing that Stuart has had a long pattern of problems affecting his practice of law. Additionally, there is some evidence that Stuart may have been and may continue to suffer from psychiatric and psychological conditions that may have contributed to his long pattern of problems in practicing of law.

35. For example, Stuart previously abandoned his law practice, requiring the State Bar to file motions for Temporary Restraining Order, Preliminary Injunction, Compel an Accounting, and to Disburse Funds from Stuart's trust account. Stuart's previous abandonment of his law practice occurred approximately 10 years prior to the conduct at issue in this matter.

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

CONCLUSIONS OF LAW

1. Stuart was properly served with process and the hearing was held with due notice to all parties.
2. All parties are properly before the hearing committee and the committee has jurisdiction over Stuart and the subject matter.
3. Stuart'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) & (3) as follows:
 - (a) By failing to appear at the May 27, 1997 Trial Session of Carteret County Superior Court and by failing to pursue his client's counterclaim once he filed it, Stuart
 - (i) intentionally failed to carry out a contract of employment entered into with a client for professional services, in violation of Rule 7.1(a)(2) of the Rules of Professional Conduct;
 - (ii) intentionally prejudiced or damaged his client during the course of the professional relationship, in violation of Rule 7.1(a)(3);
 - (iii) engaged in conduct prejudicial to the administration of justice, in violation of Rule 1.2(d);
 - (iv) failed to act with reasonable diligence and promptness in representing a client, in violation of Rule 6(b)(3); and
 - (v) handled a legal matter without preparation adequate under the circumstances, in violation of Rule 6(a)(2).
 - (b) By failing to respond to the Grievance Committee's requests for a response to the Judge Fullwood's grievance, Stuart knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct and N.C. Gen. Stat. Section 84-28(b)(3).

4. By failing to pay child support to Ms. Doyle, Stuart's license to practice law could be suspended pursuant to N.C. Gen. Stat. Sections 110-142 & 142.1.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes the additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
 - a. a long pattern of professional difficulties,
 - b. multiple offenses, and
 - c. 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, and
 - b. personal or emotional problems
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, William C. Stuart III, is hereby suspended from the practice of law for five years beginning 30 days from service of this order upon defendant.
2. After no less than 1 year following the effective date of the order, Stuart may file a verified petition for a stay of the remaining period of the suspension in accordance with the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules ("Discipline Rules"). Stuart's remaining suspension may be stayed if he establishes by clear cogent and convincing evidence the following:
 - a. Stuart has complied with all the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules;
 - b. Stuart has complied with all the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules;

c. Stuart has completed participation in a lawyers management assistance program, approved by the State Bar, at his own expense;

d. Stuart paid all costs assessed by the Secretary in connection with this proceeding, including all costs associated with the deposition of Leta Doyle, prior to filing the petition for reinstatement;

e. Stuart has not violated any Federal or State laws during the term of his suspension;

f. Stuart has not violated any provisions of the Revised Rules of Professional Conduct of the North Carolina State Bar during the term of his suspension;

g. Stuart has submitted to a medical and psychiatric examination by a physician and a psychiatrist at least one year before he files his petition for reinstatement, at his own expense. Attached to his petition for reinstatement, Stuart must submit a certification from his treating psychiatrist certifying that: (1) he is following all recommendations for treatment of any diagnosed psychological conditions, and (2) in the psychiatrist's opinion, Stuart's psychiatric and psychological condition(s) will not prevent Stuart from adequately performing the responsibilities of an attorney or pose a threat to the public, if he is allowed to practice law. Stuart must also execute a release allowing the State Bar to obtain his medical records and attach that release to his petition for reinstatement.

h. Stuart has paid all past and present membership fees, late fees, and client security assessments prior to filing his petition for reinstatement. and

i. Stuart has paid all past and present amounts owed as child support for his two sons prior to filing his petition for reinstatement.

3. If an order is subsequently entered staying the remaining term of Stuart's suspension and reinstating Stuart's license to practice law, such order of stayed suspension may continue in effect for the balance of the term of the suspension only upon compliance with all of the following conditions:

a. Stuart must pay all costs assessed by the Secretary in connection with his verified petition for a stay of his suspension within 90 days of service of the costs;

b. Stuart shall violate no Federal or State laws during the term of his stayed suspension;

c. Stuart shall violate no provisions of the Revised Rules of Professional Conduct of the North Carolina State Bar during the term of his stayed suspension; and

d. Stuart shall provide reports from his treating psychiatrist on a bi-annual basis certifying that for the past six months: (1) he has followed all recommendations for treatment of any diagnosed psychological conditions; and (2) in the psychiatrist's opinion, Stuart's psychiatric and psychological condition(s) will not prevent Stuart from adequately performing the responsibilities of an attorney or pose a threat to the public, if he is allowed to practice law.

These reports shall be provided to the State Bar no later than January 30 and July 31 of each year the suspension is stayed. Stuart is solely responsible for providing these reports on a timely basis and for all costs associated with providing such reports.

e. Stuart shall pay all amounts due in child support when due. Failure to pay child support on a current basis shall be grounds for re-activating the suspension of Stuart's license.

4. If no part of the suspension is stayed or if the suspension is stayed and subsequently activated, Stuart must petition the DHC at the end of the five year suspension and establish by clear cogent and convincing evidence compliance with all of the conditions set forth in paragraph 2 above before his license to practice law is reinstated. The Disciplinary Hearing Commission retains jurisdiction to impose any additional conditions on the practice of law by Stuart which a duly impaneled hearing committee believes are necessary for the protection of the public at the time Stuart petitions for reinstatement.

5. Stuart shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.

Signed by the chair with the consent of the other hearing committee members, this the 21st day of May 1999.


Franklin E. Martin
Hearing Committee Chair