

NORTH CAROLINA :

WAKE COUNTY :

THE NORTH CAROLINA STATE BAR, )

Plaintiff )

v. )

ARTHUR J. REDDEN, JR., )

Defendant )

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
89 DHC 27

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This matter came on to be heard and was heard on December 22, 1989 before a hearing committee of the Disciplinary Hearing Commission composed of John B. McMillan, Chairman, Robert C. Bryan, and J. Richard Futrell. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant was represented by Richard J. Vinegar and Harry H. Harkins, Jr. 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, Arthur J. Redden, was admitted to the North Carolina State Bar on September 14, 1964, 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 referred to herein, Redden was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Hendersonville, Henderson County, North Carolina.
4. Dennis Lee Weydener, the son of Betty W. Irving (hereinafter Irving), was killed in a car accident in Hendersonville, North Carolina. Irving retained Redden to represent the estate of Dennis Lee Weydener and to sue the driver of the car and the owner of a local bar where her son had become intoxicated before his death. Redden prepared and filed a wrongful death action in the name of Irving as administratrix of her son's estate. The action Betty

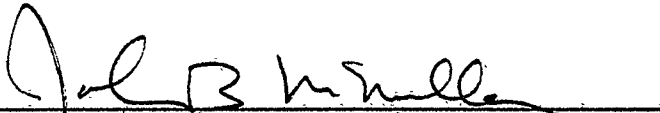
Weydener Irving, administratrix of Estate of Dennis Lee Weydener v. Karol Ellen Wright, et. al. was filed in Henderson County (87 CVS 367).

5. During discovery in that action, Redden's opposing counsel properly noticed and conducted the depositions of thirteen potential witnesses.
6. Redden did not notify Irving that these depositions were taking place and they were held without her knowledge and the opportunity to attend.
7. Redden himself attended only one of the thirteen depositions, that of Detective Sergeant Bill Norton.
8. One of the defendants in the wrongful death action engaged in informal settlement discussions with Redden, but Redden did not follow up on those discussions nor did he inform Irving of his conversations with opposing counsel. These discussions did not include a formal offer of settlement for a definite amount.
9. During the course of Redden's representation, he failed to adequately communicate with Irving regarding the chances of success and settlement possibilities.

Based upon the foregoing Findings of Fact, the hearing committee makes the following CONCLUSIONS OF LAW:

1. Redden failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(B)(3) of the Rules of Professional Conduct.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 9<sup>th</sup> day of May, 1990.

  
John B. McMillan, Chairman  
The Disciplinary Hearing Commission  
Post Office Box 20389  
Raleigh, North Carolina 27619-0389  
Telephone: 919/787-8880

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ORDER OF DISCIPLINE

This cause was heard on December 22, 1989 by a duly appointed hearing committee of the Disciplinary Hearing Commission consisting of John B. McMillan, Chairman, Robert C. Bryan, and J. Richard Futrell. In addition to the Findings of Fact and Conclusions of Law made following the evidentiary hearing, the hearing committee makes an additional Finding of Fact in aggravation as follows:

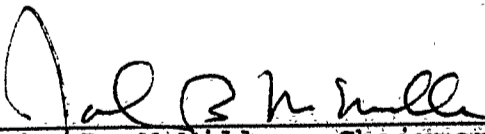
ADDITIONAL FINDINGS OF FACT

1. Defendant did not respond promptly to North Carolina State Bar Counsel's requests for information regarding the grievance filed by Betty W. Irving.
2. Defendant received a private reprimand in 1980.
3. There was no evidence that Defendant's misconduct caused any monetary damage or loss to his client.

Based upon the Findings of Fact and Conclusions of Law entered in this case and the further Findings of Fact set forth above, the hearing Committee enters the following ORDER OF DISCIPLINE:

1. The Defendant shall be publicly reprimanded for his misconduct.
2. The Defendant shall pay the costs of this proceeding.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 9<sup>th</sup> day of May, 1990.

  
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PUBLIC REPRIMAND

This Public Reprimand 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 December 22, 1989. At that hearing, the hearing committee found that you had violated the Rules of Professional Conduct of the North Carolina State Bar.

In deciding whether or not and on what terms to accept employment, an attorney must consider a number of factors. Some of these factors are specifically enumerated in the Rules of Professional Conduct (e.g. Rule 5.1 Conflict of Interest, Rule 2.6 Fees for Legal Services, Rule 6 Failing to Act Competently and Rule 7.2 Representing the Client Within the Bounds of the Law). Other considerations are not as specific, and as stated in the Scope of the Rules of Professional Conduct "The rules do not . . . exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law."

Canon II directs that "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available." Canons VI and VII require that once employment is undertaken, "A lawyer should represent his client competently" and "A lawyer should represent his client zealously within the bounds of the law."

The preamble to the Rules of Professional Conduct directs that "A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf."

Against the background of the specific rules and those which deal more generally with the lawyer's responsibilities, lawyers are asked from time to time to represent new clients. When those clients request the attorney's assistance, the attorney must take into account the existing obligations to others. In those instances where there is a limited capacity in the lawyer's schedule, the lawyer has a duty to

decline representation or to define the conditions of the representation to enable the lawyer to comply with the rules enumerated under Canons VI and VII.

Whether or not to accept employment is frequently the most difficult decision an attorney must make in the case. If the attorney does accept representation, that attorney must then comply with all of the applicable Rules of Professional Conduct which relate to that representation.

In this instance, you agreed to represent Betty W. Irving in the administration of her late son's (Dennis Lee Weydener) estate and in prosecuting a wrongful death action on behalf of the estate. The case of Betty Weydener Irving, administratrix of the estate of Dennis Lee Weydener v. Karol Ellen Wright, et al was filed in Henderson County on May 22, 1987.

The evidence disclosed that the Weydener wrongful death case was a difficult one and, in fact, summary judgment was granted against your client. In light of the proscriptions of Canon II, accepting a difficult, but meritorious case may be laudable. However, once you agreed to accept the case, you had a duty to comply with Rule 6(B)(3).

During the course of your representation of Ms. Irving and the Weydener estate, you were given notice by counsel for the defendant that he was going to take thirteen depositions of various witnesses. Although you had talked with some of these witnesses and had the benefit of written statements of others, several of the individuals scheduled to be deposed had not given statements to the police and you were unaware of their knowledge of the events surrounding Mr. Weydener's death. Because of your busy schedule, you attended only one of the depositions which had been noticed. Furthermore, you failed to notify your client that these depositions were to be held so that she could attend in your absence.

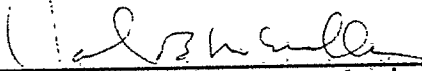
Your conduct violated Rule 6(B)(3) of the Rules of Professional Conduct. Rule 6(B)(3) provides that a lawyer shall act with reasonable diligence and promptness in representing the client. Your failure to attend the depositions in the Irving case or to make other arrangements with regard to those depositions demonstrates a lack of diligence and promptness in representing Ms. Irving.

Although there were some general settlement discussions between you and opposing counsel, the hearing panel did not find that a specific offer was made to settle the case. You are reminded that the comment to Rule 6 provides in part that "A lawyer negotiating on behalf of a client should . . . inform the client of communications from another party . . ." You failed to inform Ms. Irving of these discussions. The hearing panel found that throughout the course of your representation of the estate, you failed to communicate adequately with Ms. Irving regarding this case and the chances of success in her litigation.

Your misconduct was aggravated by your failure to respond promptly and fully to the State Bar Counsel's request for information regarding Ms. Irving's grievance. Rule 1.1(B) requires attorneys to respond to inquiries by the Bar. The response must be prompt and complete to comport with the Rule. The hearing committee admonishes you to respond fully and promptly to any future inquiries made by the State Bar concerning a grievance.

The hearing committee is satisfied that despite the violations outlined above you will in the future comply with the Rules of Professional Conduct and believes that you will heed this public reprimand.

This the 16<sup>th</sup> day of May, 1990.

  
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John B. McMillan, Chairman  
The Disciplinary Hearing Commission  
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