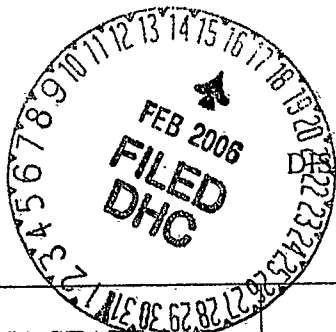


NORTH CAROLINA
WAKE COUNTY



19190

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 21

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

FRED C. MOUTOS, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND CONSENT ORDER
OF DISCIPLINE

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair, and members T. Richard Kane and H. Dale Almond. Katherine E. Jean represented the Plaintiff, the North Carolina State Bar. Defendant, Fred C. Moutos, represented himself. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence 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. Defendant, Fred C. Moutos ("Moutos"), was admitted to the North Carolina State Bar in 1992 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct. Moutos is currently administratively suspended for failure to pay mandatory State Bar dues and for failure to fulfill mandatory CLE requirements.
3. During part of the relevant periods referred to herein, Moutos was engaged in the practice of law in the State of North Carolina and maintained a law office in Oxford, Granville County, North Carolina.

4. Moutos was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

5. Moutos unlawfully and willfully failed to file his state individual income tax returns for the years from 1998 through 2002, inclusive, when such tax returns were due, as required by N.C. Gen. Stat. § 105-152. Moutos unlawfully and willfully failed to file his federal individual income tax returns for the years 1998-2002 when such returns were due.

6. Willful failure to file or pay a state income tax when due is a Class 1 misdemeanor under N.C. Gen. Stat. § 105-236 (9).

7. Moutos was charged in Wake County, North Carolina with willful failure to file his individual state income tax returns for the years 1998 through 2002.

8. Moutos pled guilty to willful failure to file his individual income tax returns for the years 1998-2002.

9. In October, 2004, Moutos was convicted of five counts of willful failure to file his individual state income tax returns, for the years 1998-2002. Moutos was ordered to file all state income tax returns for the years 1998-2002 within 30 days, to pay all past due taxes according to schedule set by his probation officer, and to remain on supervised probation until all funds owed to the North Carolina Department of Revenue were paid in full and thereafter to remain on unsupervised probation.

10. Moutos acknowledges and admits that his failure to file his state and federal income individual income tax returns and failure to pay his state and federal taxes when due violated the Rules of Professional Conduct and constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2).

11. In August, 2000, defendant represented James and Cindy Riley ("the Rileys") in a real estate closing. At closing, Moutos undertook to act as escrow agent between the Rileys and the sellers to hold in trust \$5287.50 contributed by the sellers to pay a sewer assessment against the subject property. The property which was sold was identified by the City of Durham, for purposes of the assessment, as tracts numbers 081010 and 081009. The Escrow Agreement provides in pertinent part: "Once the assessment has been confirmed and the amount known, the assessment shall be paid from the escrow established herein."

12. Moutos deposited the \$5287.50 into a trust account maintained by him at First Union National Bank (now Wachovia), account number 2000000540623 ("the first trust account"). In or about January, 2001, even though the City of Durham had not officially announced the amount of the assessment, the parties learned that the total assessment against both tracts combined would be \$3525.00. The parties agreed that Moutos could release \$1762.50 to the sellers, which he did on January 7, 2001, leaving \$3525.00 in the first trust account for the benefit of the Rileys.

13. Thereafter, on March 26, 2003, the balance in the trust account fell below \$3525.00, the minimum balance Moutos was required to maintain in the account for the benefit of the Rileys, and to date the balance has never again been equal to or greater than \$3525.00.

14. On or about November 3, 2004, the City of Durham officially served on the Rileys two assessments, one on tract #081010 for \$2350.00 and the second on tract #081009 for \$1175.00, for a total of \$3525.00. Thereafter, the Rileys attempted without success to reach Moutos. Moutos did not pay any portion of the sewer assessment to the City of Durham from the first trust account or from any other trust account. Because Moutos did not pay the assessment, on March 24, 2005, Mr. Riley paid some funds from his own account to the City of Durham, \$293.75 applied to account #081010 and \$146.87 applied to account 081009.

15. After he was served with a Letter of Notice and Subpoena for Cause Audit by the State Bar on May 2, 2005, requiring him to provide evidence about his handling of the Riley escrowed funds, on June 1, 2005, Moutos paid the City of Durham \$2200.00 from his own personal bank account at the State Employees Credit Union, account number 08632445442. The account on which the \$2200.00 check was written was not a trust account. The City of Durham applied \$1141.03 of the \$2200.00 to the assessment on account number 081010, leaving a balance owed on that account of \$976.90. The City of Durham applied the remaining \$1058.97 to account number 081009, leaving a balance due on that account of \$0.

16. In February, 2002, Moutos opened a second trust account at First Union National Bank (now Wachovia), account number 2000000570680 ("the second trust account").

17. From at least December, 2003, Moutos has not reconciled the first trust account or the second trust account, has not maintained the minimum required records for either trust account, and has not provided persons for whom he holds entrusted funds the annual accountings he is required to provide, in violation of Revised Rule of Professional Conduct 1.15-3.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over defendant, Fred C. Moutos, and over the subject matter.

2. Moutos' conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and (3) as follows:

- a. By unlawfully and willfully failing to file state and federal individual income tax returns, and by failing to pay state and federal individual income tax within the times allowed by law, Moutos committed criminal offenses showing professional

unfitness, in violation of N.C.G.S. 84-28(b)(1), committed criminal acts which reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) of the Revised Rules of Professional Conduct, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

- b. By failing to maintain in his trust account \$3525.00 which were entrusted funds held by Moutos for the benefit of the Rileys and by failing promptly to pay the sewer assessment utilizing escrowed funds held by him in trust for that purpose, Moutos violated Revised Rules of Professional Conduct 1.15-2(a), (j) and (m).
- c. By failing to keep the Rileys reasonably informed about their matter and by failing promptly to comply with reasonable requests for information from the Rileys, Moutos violated Revised Rule of Professional Conduct 1.4(a).
- d. By failing promptly to disburse \$3525.00 to the City of Durham for the benefit of the Rileys, Moutos failed to act with reasonable diligence in violation of Revised Rule of Professional Conduct 1.3.
- e. By failing to reconcile his trust account at least quarterly, failing to maintain minimum required records, and failing to provide annual accountings, Moutos violated Revised Rule of Professional Conduct 1.15-3.

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Moutos' misconduct is aggravated by the following factors:
 - a. Moutos has engaged in a pattern of misconduct;
 - b. Moutos has committed multiple offenses;
 - c. Moutos has substantial experience in the practice of law;
 - d. Moutos failed to comply with the State Bar's subpoena for cause audit by failing to produce the records subpoenaed by the State Bar;

- e. Moutos abandoned his law practice, was not available to communicate with his clients and others to whom he owed duties, failed properly to disburse \$37,000.00 of entrusted funds remaining in the second trust account, and failed to provide the State Bar with evidence from which the beneficial owners of those funds can be identified and located;
 - f. Moutos failed to comply with this hearing committee's Order Compelling Discovery entered in this proceeding;
 - g. Moutos failed to comply with his obligation to pay his North Carolina State Bar membership dues, despite having been served with a Notice to Show Cause why his license should not be suspended for failure to pay that obligation;
 - h. Moutos failed to provide the State Bar with proof of compliance with his mandatory continuing legal education obligations since 2003;
 - i. Moutos has not responded promptly to State Bar inquiries about the status of the Riley matter and has not cooperated with the State Bar's investigation; and
 - j. Moutos has a history of discipline including an admonition in 1994 and a Letter of Warning in 2004.
2. Moutos' misconduct is mitigated by the following factors:
- a. Imposition of other penalties or sanctions, to wit: probation, court costs and a fine as described above;
 - b. The violations occurred during a period of emotional difficulty associated with family problems and a serious illness of his mother;
 - c. Remorse;
 - d. Absence of a dishonest or selfish motive; and
 - e. Moutos has now paid all state income tax, penalties and interest for the years 1998-2002.
3. The aggravating factors outweigh the mitigating factors.

4. Moutos has significantly harmed his clients, James and Cindy Riley, by failing to pay the entire amount of the City of Durham sewer assessment, leaving the Rileys with an unpaid obligation.

5. Moutos' failure to cooperate with the State Bar's investigation of the Riley matter and his failure to make restitution to the Rileys have interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.

6. This DHC Committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the harm caused by the conduct of Moutos.

7. This DHC Committee finds that Moutos' conduct caused significant harm and significant potential harm to clients, to the administration of justice, to the profession, and to members of the public, and that a discipline more severe than public censure or reprimand is necessary to protect the public.

8. Entry of an order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses committed by Moutos, 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.

9. For those reasons, this DHC Committee believes and so finds that an Order calling for a discipline short of a suspension of Moutos' law license would not be appropriate.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of defendant, Fred C. Moutos, is hereby suspended for five (5) years beginning 30 days from service of this Order upon Moutos.

2. Moutos 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 Moutos.

3. Moutos shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Moutos shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. Within 15 days of the effective date of this order, Moutos shall provide the State Bar with an address at which clients seeking return of files can obtain such files and shall promptly return all files to his clients upon request.

5. After serving one year of the active suspension of his license, Moutos may apply for reinstatement upon filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:

- a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules.
- b. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him.
- c. That within six months of service of this order, he paid restitution \$1417.52 to Mr. and Mrs. James Riley, plus all interest which accrued on the Rileys' assessment accounts with the City of Durham as a result of Moutos' failure to timely pay the assessments.
- d. That he has submitted clear, cogent and convincing evidence that he is not suffering from any mental or physical condition that significantly impairs his professional judgment, performance or competence.
- e. That he has kept his address of record with the North Carolina State Bar current, promptly accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication.
- f. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or of any state.
- g. That he paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension.
- h. That he has participated in the North Carolina State Bar's fee dispute resolution process for any subsequent petition received after the effective date of this order, participated in good faith and refunded all fees that were determined to be subject to refund by the mediation process.

- i. He has filed all state and federal individual income tax returns for the years 1998-2003.
- j. He has timely filed all tax returns which have become due during the period of suspension.
- k. He has paid all state and federal taxes, penalties and interest which are owed at the effective date of this Order.
- l. He has timely paid all future state and federal taxes.
- m. At the time of or prior to his application for reinstatement, he has filed with the State Bar documentation from the North Carolina Department of Revenue and from the Internal Revenue Service (IRS) showing his compliance with conditions i-l above.
- n. Within ninety (90) days of the effective date of this Order, he has provided the State Bar with the names, addresses and telephone numbers of all persons or entities for whose benefit he holds any funds in the first or second trust account.
- o. Satisfactorily completed a law office management course approved by the State Bar.

6. At the end of the five (5) year suspension, Moutos will be eligible for reinstatement only upon a showing by clear, cogent and convincing evidence, that he has complied with all of the conditions 5(a) through 5(o) above.

7. If during the five (5) year period of suspension Moutos shall seek to have any portion of the stay lifted, Moutos shall bear the burden of proving by clear, cogent and convincing evidence that he has complied with all of the conditions 5(a) through 5(o) above.

8. If the stay is lifted and Moutos is reinstated to practice during any portion of the five (5) year suspension, and if during such stay period Moutos fails to comply with any one or more of the conditions 5(a) through 5(o) above, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

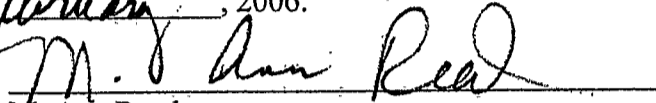
9. If the stay is lifted and Moutos is reinstated to practice during any portion of the five (5) year suspension, throughout the entire period of any such stay of the suspension Moutos shall perform monthly reconciliations of any and all trust account(s) maintained by him and shall provide the State Bar with quarterly audits of such trust account(s) performed by a certified public accountant at Moutos' expense.

10. If any stay of the suspension is lifted and the suspension is activated for any reason, Moutos must show by clear, cogent, and convincing evidence that he complied with all of the conditions 5(a) through 5(o) above before seeking reinstatement.

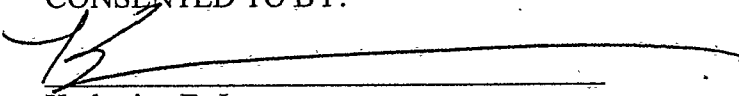
11. If Moutos successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he continues to comply with all of conditions 5(a) through 5(o) above.

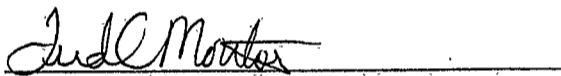
12. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

Signed by the Chair with the consent of the other hearing committee members, this the 15th day of February, 2006.


M. Ann Reed
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:


Katherine E. Jean
Deputy Counsel
Attorney for Plaintiff


Fred C. Moutos
Defendant