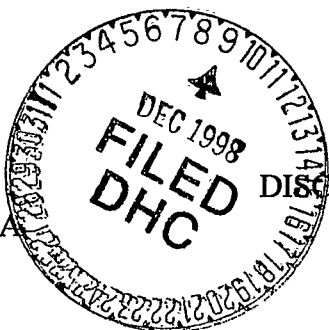


WAKE COUNTY
NORTH CAROLINA



16544

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
98 DHC 23

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

WILLIAM B. BARROW, ATTORNEY
Defendant

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)
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
) AND ORDER OF DISCIPLINE
)
)
)

THIS MATTER came on to be heard and was heard on Dec. 4, 1998 before a hearing committee of the Disciplinary Hearing Commission composed of Fred H. Moody, Jr., Vernon A. Russell and Anthony E. Foriest. Carolin Bakewell represented the North Carolina State Bar. The Defendant, William B. Barrow, was not present nor was he represented by counsel. Based upon the pleadings herein and the evidence presented at the hearing, the 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, William B. Barrow, (hereafter, Barrow) was admitted to the North Carolina State Bar in 1989, 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 or a portion of the relevant periods referred to herein, Barrow was actively 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. Barrow was personally served with the State Bar's complaint and alias & pluries summons by the Wake County Sheriff on Oct. 20, 1998.

5. Barrow failed to file an answer or other responsive pleadings.
6. On Nov. 16, 1998, the Secretary entered Barrow's default, based upon his failure to file an answer or other responsive pleadings.
7. Barrow was notified that a hearing would be held on Dec. 4, 1998 to determine the appropriate discipline to be entered based upon the misconduct admitted by reason of his default.
8. The Disciplinary Hearing Commission has jurisdiction over Barrow's person and over the subject matter of this proceeding.
9. In May 1997, Barrow undertook to represent Chris Munn (hereafter, Munn), respecting a DWI charge which was then pending against Munn.
10. Munn paid Barrow a \$750 fee in May 1997.
11. Barrow failed to appear in Wake County District Court on Jan. 22, 1998, when the hearing in Munn's case was set.
12. After October 1997, Barrow failed to communicate with Munn about the case or to return his telephone inquiries about the case.
13. Ultimately, another attorney was appointed to represent Munn and to handle the DWI charge.
14. In the spring of 1998, Barrow offered to refund the fee which Munn had paid him, on condition that Munn would drop his grievance and "get the State Bar off [Barrow's] back." Barrow has not refunded any portion of the \$750 fee.
15. On Feb. 19, 1998, the N.C. State Bar issued a letter of notice and substance of grievance to Barrow, advising him that a grievance had been filed against him respecting his handling of Munn's DWI case.
16. Barrow was served with the letter of notice and substance of grievance regarding the Munn matter on Feb. 19, 1998.
17. Barrow failed to respond to the State Bar's letter of notice of Feb. 19, 1998, or to a follow up letter dated April 1, 1998 respecting the Munn matter.
18. In April 1994, Barrow undertook to represent Kitty Bryant (hereafter, Ms. Bryant), respecting a property damage and personal injury claim arising out of an auto accident in which Ms. Bryant was involved on April 16, 1994.

19. In December 1996, Barrow left a message on Ms. Bryant's telephone answering machine, indicating that her claim would be settled before the end of 1996.

20. Barrow did not settle Ms. Bryant's case, however, and did not respond to her inquiries about her case after December 1996.

21. As a result of Barrow's failure to pursue Ms. Bryant's case, her claim is now barred by the statute of limitations and she has been forced to pay for her medical expenses from her own funds.

22. On or about Feb. 19, 1998, the N.C. State Bar issued to Barrow a letter of notice and substance of grievance, notifying him that Ms. Bryant had filed a grievance against him respecting his handling of her personal injury case.

23. Barrow was served with the letter of notice and substance of grievance on Feb. 19, 1998.

24. Barrow did not respond to the State Bar's Feb. 19, 1998 letter of notice or to a follow up letter which was sent to him on April 1, 1998 respecting Ms. Bryant's grievance.

25. In November 1995, Barrow undertook to represent Beth Lafko (hereafter, Ms. Lafko), regarding a personal injury action arising out of a fall.

26. In November 1997, Barrow told Ms. Lafko that he would file a complaint on her behalf if he was unable to settle the case by Christmas of 1997.

27. Barrow neither settled Ms. Lafko's case nor filed suit on her behalf and failed to pursue her claim diligently.

28. Barrow has failed to communicate with Ms. Lafko about her case and failed to respond to her requests for information.

29. On or about Feb. 19, 1998, the N.C. State Bar issued to Barrow a letter of notice and substance of grievance, notifying him that Ms. Lafko had filed a grievance against him arising out of his handling of her personal injury case.

30. Barrow was served with the letter of notice and substance of grievance on Feb. 19, 1998 respecting Ms. Lafko's grievance.

31. Barrow did not respond to the State Bar's Feb. 19, 1998 letter of notice or to a follow up letter which was sent to him on April 1, 1998 respecting Ms. Lafko's grievance.

32. Prior to August 1997, Barrow undertook to represent Angela Thompson (hereafter, Ms. Thompson), respecting a personal injury claim arising out of an automobile accident in which Ms. Thompson was involved.

33. Barrow failed to pursue Ms. Thompson's case diligently and failed to respond to a number of calls which Ms. Thompson made about her case.

34. In October 1997, Barrow falsely told Ms. Thompson that he had sent all of the information and material needed to complete her med-pay claim to the insurance company.

35. In fact, Barrow did not respond to calls and requests for information from the adjusters concerning Ms. Thompson's med-pay claim.

36. In February 1998, Ms. Thompson directed Barrow to return her client file to her.

37. Barrow failed to return the file to Ms. Thompson until mid-April 1998.

38. On or about Feb. 19, 1998, the N.C. State Bar issued to Barrow a letter of notice and substance of grievance, notifying him that Ms. Thompson had filed a grievance against him respecting his handling of her personal injury case.

39. Barrow was served with the letter of notice and substance of grievance on Feb. 19, 1998 respecting Ms. Thompson's grievance.

40. Barrow did not respond to the State Bar's Feb. 19, 1998 letter of notice or to a follow up letter which was sent to him on April 1, 1998 respecting Ms. Thompson's grievance.

41. In late October 1997, Barrow undertook to represent Kimberly Dawn McLamb (hereafter, Ms. McLamb), respecting a speeding ticket which Ms. McLamb received in October 1997.

42. Terry L. McLamb, (hereafter, Mr. McLamb), who is Ms. McLamb's father, paid Barrow \$400 on or about Oct. 23, 1997. A total of \$300 of the \$400 payment represented Barrow's fee and the remaining \$100 was to be held for payment of any fines and costs assessed in the case.

43. Prior to the hearing date respecting the ticket, Barrow advised Mr. McLamb that it was not necessary for Ms. McLamb to appear in court.

44. Barrow failed to appear in Harnett County District Court on Ms. McLamb's behalf in November 1997, when the matter was scheduled for hearing.

45. On Dec. 18, 1997, the Department of Motor Vehicles issued a notice, advising Ms. McLamb that her license would be suspended effective Feb. 16, 1998 based upon her failure to appear in Harnett County District Court respecting the speeding ticket.

46. Ms. McLamb had been unaware that Barrow had failed to appear in court on her behalf until she received the notice from the Department of Motor Vehicles.

47. Barrow failed to respond to inquiries from Ms. McLamb and Mr. McLamb about the case.

48. Barrow did not take any steps to assist Ms. McLamb in resolving the ticket or her problems with the Department of Motor Vehicles arising out of his failure to appear in court on Ms. McLamb's behalf.

49. On or about Feb. 19, 1998, the N.C. State Bar issued to Barrow a letter of notice and substance of grievance, notifying him that Mr. McLamb had filed a grievance against him arising out of his handling of her personal injury case.

50. Barrow was served with the letter of notice and substance of grievance on Feb. 19, 1998 respecting McLamb's grievance.

51. Barrow did not respond to the State Bar's Feb. 19, 1998 letter of notice or to a follow up letter which was sent to him on April 1, 1998 respecting McLamb's grievance.

52. In early October 1996, Barrow undertook to represent David C. Artman (hereafter, Artman), respecting injuries which Artman received in an accident in September 1996.

53. By November 1997, Barrow had become increasingly uncommunicative and would not return most of Artman's telephone calls and inquiries about his case.

54. The last communication which Artman received from Barrow occurred on approximately Nov. 19, 1997, when Barrow responded by telephone to a letter which Artman had sent to Barrow by facsimile transmission. In the Nov. 19, 1997 telephone conversation, Barrow assured Artman that he was working on the case and that it would be settled within a month or two.

55. After Nov. 19, 1997, Barrow did not respond to any of Artman's other calls or requests for information about his case.

56. Barrow has not settled Artman's case nor has he filed suit on his behalf.

57. On or about April 23, 1998, the N.C. State Bar issued a letter of notice and substance of grievance to Barrow, notifying him that Artman had filed a grievance against him.

58. Barrow was served with the State Bar's letter of notice and substance of grievance on April 27, 1998.

59. Barrow did not respond to the State Bar's letter of notice and substance of grievance concerning Artman's grievance.

60. On or about Aug. 19, 1992, Barrow undertook to represent Bertha Earp (hereafter, Ms. Earp), respecting injuries which she received in an auto accident on Aug. 18, 1992.

61. In a handwritten letter dated July 14, 1995, Barrow told Ms. Earp that "we are moving towards settlement in your claim and I expect to hear from the insurance company by the end of this month."

62. The statement in Barrow's July 14, 1995 letter was untrue, as, in fact, Barrow had neglected Ms. Earp's personal injury action and had no reasonable basis upon which to believe that the case was near settlement.

63. Barrow failed to settle Ms. Earp's claim or file suit on her behalf prior to the running of the statute of limitations.

64. Barrow failed to communicate with Ms. Earp about her case or to advise her that he had missed the statute of limitations.

65. On Oct. 1, 1997, Ms. Earp filed a grievance against Barrow with the N.C. State Bar.

66. Shortly after Oct. 1, 1997, Ms. Earp's grievance was referred to the 10th Judicial District Grievance Committee for investigation.

67. The 10th Judicial District Grievance Committee notified Barrow of Ms. Earp's grievance by letter dated Nov. 24, 1997 and asked him to respond. Barrow did not respond to this notice, nor to follow up letters sent to him by the local committee on Jan. 8, 1998 and Feb. 10, 1998.

68. On Dec. 4, 1997, after receiving notice of the grievance, Barrow telephoned Ms. Earp, asked her to tell the 10th Judicial District Grievance Committee that she wanted the grievance dismissed and promised that he would get her case "done" by the end of the year. Barrow did not tell Ms. Earp that the statute of limitations had run on her claim.

69. On a number of occasions between April 1996 and November 1997, Barrow received sums from clients which he was directed to hold in trust for the payment of fines and costs in the clients' traffic cases.

70. A list of the clients from whom Barrow received sums to be held for the payment of fines and costs, the amount of the funds received and the date of receipt is as follows:

<u>Client</u>	<u>Date Received</u>	<u>Amount</u>
Michael Bennett	4/16/96	\$140
Michael Bennett	10/18/96	\$65
Lamont Harris	5/14/97	\$65
William Kidd	5/22/97	\$80
Raji Juma	9/17/97	\$80
Kim McLamb	10/23/97	\$100
Winston Tsai	9/23/97	\$130

71. Barrow failed to deposit into a trust account the sums which he received from the clients referred to in paragraph 70.

72. Barrow temporarily misappropriated the funds given to him by the clients referred to in paragraph 71, without the clients' knowledge and consent.

Based upon the foregoing FINDINGS OF FACT, the hearing committee hereby enters the following:

CONCLUSIONS OF LAW

1. By failing to respond to the State Bar's letters of notice and follow up letters respecting grievances filed against him by Chris Munn, Kitty Bryant, Beth Lafko, Terry McLamb, Angela Thompson, and David Artman and by failing to respond to a letter of notice and follow up letter respecting a grievance filed by Bertha Earp, which was issued to Barrow by the 10th Judicial District Grievance, Barrow failed to respond to lawful inquiries of a disciplinary authority, in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct.

2. By failing to communicate with his clients, Chris Munn, Kitty Bryant, Beth Lafko, Kim McLamb, Bertha Earp, Angela Thompson and David Artman, about their legal matters and by failing to respond to their inquiries about their cases, Barrow failed to communicate adequately with his clients and failed to comply promptly with his clients' requests for information about the case, in violation of Rule 6(b)(1) of the Rules of Professional Conduct and Rule 1.4(a) of the Revised Rules of Professional Conduct.

3. By failing to appear in Wake County District Court on Jan. 22, 1998 to represent Munn respecting the DWI charge pending against Munn, and by failing to appear in Harnett County District Court on Kim McLamb's behalf in November 1997, Barrow failed to act with reasonable diligence respecting his clients' legal matter in violation of Rule 1.3 of the Revised Rules of Professional Conduct.

4. By failing to refund any portion of the \$750 which he received from Munn and Barrow charged illegal or clearly excessive fees in violation of Rule 2.6 of the Rules of Professional Conduct and Rule 1.5(a) of the Revised Rules of Professional Conduct and failed to promptly deliver to the client funds belonging to the client, in violation of Rule 1.15-2(h) of the Revised Rules of Professional Conduct.

5. By offering to refund Munn's \$750 fee in an attempt to persuade Munn to drop the grievance which he filed against Barrow, Barrow engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct.

6. By failing to promptly pursue personal injury claims on behalf of Mr. Artman, Ms. Bryant, Ms. Thompson, Ms. Earp and Ms. Lafko, Barrow failed to act with reasonable diligence respecting his clients' legal matters in violation of Rule 6(b)(3) of the Rules of Professional Conduct and Rule 1.3 of the Revised Rules of Professional Conduct.

7. By falsely advising Ms. Thompson that he had forwarded the necessary documents to the insurance company to process Ms. Thompson's med-pay claim, Barrow engaged in dishonest conduct in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

8. By falsely telling Ms. Earp in 1995 that her case was about to be settled and by telling Ms. Earp in December 1997 that he would get her case "done" by the end of the year, without advising her that the statute of limitations had run on her claim and for the apparent purpose of getting Ms. Earp to ask that her grievance be dismissed, Barrow engaged in false, deceptive or dishonest conduct in violation of Rule 1.2(c) of the Rules of Professional Conduct and Rule 8.4(c) of the Revised Rules of Professional Conduct and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct.

10. By temporarily misappropriating sums which had been given to him by clients to hold in trust for the payment of fines and costs in the clients' traffic cases, Barrow engaged in criminal acts in violation of Rule 1.2(b) of the Rules of Professional Conduct, Rule 8.4(b) of the Revised Rules of Professional Conduct and engaged in dishonest conduct in violation of Rule 1.2(c) of the Rules of Professional Conduct and Rule 8.4(b) of the Revised Rules of Professional Conduct.

11. By failing to deposit into his trust account funds given to him by clients to hold in trust for the payment of fines and costs in the clients' traffic cases, Barrow failed to hold client funds in a trust account in violation of Rule 10.1(c) of the Rules of Professional Conduct and Rule 1.15-1(d) of the Revised Rules of Professional Conduct.

Based upon the evidence presented by the North Carolina State Bar during the second, or disciplinary phase of the hearing, the hearing committee also makes the following

FINDINGS OF FACT RESPECTING DISCIPLINE

1. In addition to the matters set out in the State Bar's complaint, the State Bar received grievances from 16 other former clients of Barrow's in early 1998. In each of these additional 16 cases, the client complained that Barrow had neglected the client's case and had failed to communicate with the client. Two of the clients also alleged that Barrow had lied about the status of the client's case.

2. Cristina Toro is one of the 16 former clients of Barrow's who filed a complaint with the State Bar in early 1998 and who are referred to in paragraph 1 above. Although Barrow undertook to handle Toro's personal injury action in 1991, he failed to take any effective action on her behalf and Toro never recovered any sums for her injuries.

3. Barrow failed to respond to any of the 16 additional grievances filed against him with the Bar, despite the fact that he was served with proper notice of each matter.

4. Barrow has failed to pay his mandatory State Bar dues for 1998.

5. Barrow has failed to comply with the State Bar's mandatory continuing legal education requirements.

6. Barrow failed to participate in mandatory fee arbitration respecting an arbitration request filed by David Christopher Munn, despite having received proper notice of the fee arbitration request in July 1998, in violation of Rule 1.5 of the Revised Rules of Professional Conduct.

7. By early 1998, Barrow had abandoned his law practice and, as a result, the State Bar was forced to request the Wake County Superior Court to appoint a trustee-conservator to wind down Barrow's law office, to protect his clients and other members of the public.

8. The N.C. State Bar paid \$1,281.38 to Marty Martin, the trustee-conservator, for his services in winding down Barrow's law practice. The State Bar has not been reimbursed by Barrow for this amount.

9. The N.C. State Bar paid \$193.05 to obtain copies of Barrow's bank records.

10. The defendant's misconduct is aggravated by the following factors:

- a) pattern of misconduct
- b) multiple offenses
- c) indifference to making restitution
- d) bad faith obstruction of the disciplinary investigation by failing to respond to the State Bar's letters of notice and by failing to cooperate with the State Bar's efforts to obtain bank record.

11. The defendant's misconduct is mitigated by the following factors:

- a) absence of prior discipline

12. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing Findings of Fact Respecting Discipline and the arguments of the State Bar concerning the appropriate discipline, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The defendant is hereby disbarred from the practice of law, beginning 30 days from the date of service of this order upon the defendant.

2. The defendant shall submit his license and membership card to the Secretary of the N.C. State Bar no later than 30 days following service of this order upon the defendant.

3. The defendant shall reimburse the N.C. State Bar for the \$193.05 paid to obtain copies of the defendant's bank records and the \$1,281.38 paid the trustee-conservator of the defendant's law practice prior to seeking reinstatement of his license to practice law in North Carolina.

4. Prior to being reinstated to the practice of law, the defendant shall demonstrate by clear, cogent and convincing evidence that

- a) he is competent to practice law and is not suffering from any mental or physical disorder.

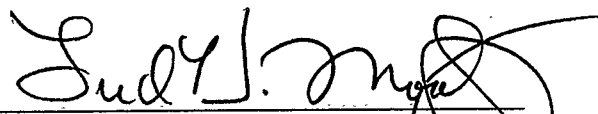
- b) he has made all clients mentioned in State Bar Exhibit no. 34 whole. In determining the amounts to be made as restitution, the defendant shall cooperate fully with the State Bar and shall deliver the files of all clients listed in State Bar Exhibit no. 34 to the State Bar within 30 days of the effective date of this order.

c) he has paid \$750 to Chris Munn.

5. Defendant shall pay the costs of this action.

Signed by the Chair with the knowledge and consent of the other hearing committee members.

This the 9th day of December, 1998.

A handwritten signature in cursive script, appearing to read "Fred H. Moody, Jr.", written over a horizontal line.

Fred H. Moody, Jr., Chair
Disciplinary Hearing Committee