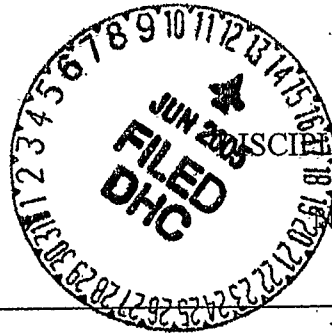


WAKE COUNTY
NORTH CAROLINA



14221
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 3

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

DARWIN LITTLEJOHN, ATTORNEY
Defendant

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

THIS MATTER came on to be heard and was heard on June 10, 2005 before a duly assigned hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; Tommy W. Jarrett and Marguerite P. Watts. Carolin Bakewell appeared for the North Carolina State Bar. The Defendant, Darwin Littlejohn, did not appear and was not represented by counsel. Based upon the pleadings herein and the evidence introduced at trial, the hearing committee hereby makes the following:

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, Darwin Littlejohn (hereafter, Littlejohn), was admitted to the North Carolina State Bar in 1987, 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, Littlejohn was engaged in the practice of law in Winston-Salem, North Carolina.
4. The complaint in this action was filed on Jan. 19, 2005.
5. Littlejohn was personally served with the Summons and Complaint herein by the Forsyth County Sheriff's Department on Jan. 27, 2005.
6. Littlejohn's answer was due no later than Feb. 16, 2005.

7. Littlejohn did not file an answer or other responsive pleading.
8. The Secretary of the N.C. State Bar entered Littlejohn's default on March 2, 2005.
9. The Disciplinary Hearing Commission has jurisdiction over Littlejohn's person and over the subject matter of this proceeding.
10. Littlejohn had proper notice of the time, date and place of this hearing.
11. On or about Jan. 9, 2004, Shirese Moore Adams ("Adams"), retained Littlejohn to file a divorce complaint on her behalf. She paid Littlejohn \$290, which sum included a \$90.00 filing fee and a \$200.00 advance fee.
12. Littlejohn did not file a divorce complaint for Adams or otherwise take effective action to assist her in the domestic case.
13. Littlejohn did not communicate with Adams or keep her advised of the status of her case.
14. On May 14, 2004, Adams filed a fee dispute petition against Littlejohn with the North Carolina State Bar.
15. On June 9, 2004, Littlejohn was served with notice of Adams' fee dispute petition by certified mail and was directed to respond in writing within 15 days.
16. Littlejohn did not respond to Adams' fee dispute petition, participate in mediation or refund any portion of Adams' fee.
17. Littlejohn failed to return the \$90 filing fee to Adams after he was discharged and applied the funds for his own benefit or those of third parties other than Adams without her knowledge and consent.

18. On or about March 2, 2004, Sharon Philson ("Philson"), and her sister, Angela Crawford ("Crawford"), retained Littlejohn to represent them in a will caveat proceeding. They paid Littlejohn a \$50 consultation fee and a \$200 advance fee.

19. Littlejohn did not take any effective action to assist Philson or Crawford with the will caveat proceeding.

20. Littlejohn did not communicate with Philson or Crawford about the status of their case.

21. On June 10, 2004, Philson and Crawford filed a fee dispute petition against Littlejohn with the North Carolina State Bar.

21. On June 12, 2004, Littlejohn was served with notice of Philson and Crawford's fee dispute petition by certified mail and was directed to respond in writing within 15 days.

23. Littlejohn did not respond to the fee dispute petition filed by Philson and Crawford, did not participate in the mediation process and did not refund any portion of the fee paid by Philson and Crawford.

24. On April 14, 2004, the Disciplinary Hearing Commission of the North Carolina State Bar ("DHC"), entered an order suspending Littlejohn's law license for two years. Littlejohn was present at the hearing at which the suspension order was announced and was aware of its terms and provisions.

25. Pursuant to 27 N.C.A.C. Section .0124(c) of the State Bar Discipline & Disability Rules ("Rule .0124(c)"), Littlejohn was forbidden from undertaking any new legal matters for clients after entry of the order of discipline on April 14, 2004.

26. Littlejohn was served with DHC's written order of discipline on April 30, 2004 and the two-year suspension of his license became effective on May 30, 2004.

27. On or about April 13, 2004, Cynthia Handy ("Handy"), retained Littlejohn to file a divorce complaint on her behalf.

28. Handy paid Littlejohn a total of \$500 in fees between April 13 and May 11, 2004. She also paid him \$90 in court costs on May 20, 2004.

29. Littlejohn did not tell Handy that a disciplinary order suspending his law license had been entered by the DHC.

30. Littlejohn intentionally concealed the imminent suspension of his law license from Handy for the fraudulent purpose of inducing her to pay the \$590 in fees and costs to him, although he knew or should have known that it would be impossible for him to complete Handy's legal matter before the suspension of his law license became effective.

31. Littlejohn did not file a divorce complaint or take other effective action on Handy's behalf.

32. Littlejohn failed and refused to return the \$590 in fees and costs to Handy when she discharged him.

33. Littlejohn used the \$90 filing fee paid to him by Handy for his own benefit or that of third parties, without Handy's knowledge and consent.

34. On or about April 29, 2004, Christopher McSwain ("McSwain"), retained Littlejohn to represent him in a domestic action. He paid Littlejohn a \$1,000 fee.

35. Because Littlejohn had not previously represented McSwain in his domestic action, the legal matter that Littlejohn accepted for McSwain on or about April 29, 2004 was a new legal matter within the meaning of Rule .0124(c).

36. Littlejohn knew or should have known that he was not authorized to accept new client matters after April 14, 2004.

37. Littlejohn intentionally concealed from McSwain the fact that he was about to lose his law license for the fraudulent purpose of inducing McSwain into paying him a fee, despite the fact that Littlejohn knew or should have known that it would be impossible for him to complete McSwain's legal matter before the suspension of his law license became effective.

38. McSwain was unaware of the terms of the DHC disciplinary order when he retained Littlejohn's services and paid the \$1,000 fee to him.

36 Littlejohn did not take effective action to assist McSwain with his legal matter and failed to communicate with McSwain about the status of the case.

37. Littlejohn failed to refund the unearned portion of the \$1,000 fee when McSwain discharged him.

38. On June 22, 2004, McSwain filed a fee dispute petition against Littlejohn with the North Carolina State Bar.

39. On June 26, 2004, Littlejohn was notified of McSwain's fee dispute petition by certified mail and was directed to respond in writing within 15 days.

40. Littlejohn did not respond to McSwain's fee dispute petition, did not participate in the mediation process and did not refund any portion of the fee paid to him by McSwain.

41. On or about May 11, 2004, Littlejohn undertook to represent Michael Shane Martin ("Martin"), regarding a criminal matter.

42. On or about May 11, 2004, Martin's father, Lawrence Martin, paid Littlejohn a \$1,500 fee on Martin's behalf.

43. The case that Littlejohn undertook for Martin on May 11, 2004 was a new matter within the meaning of Rule .0124. Littlejohn knew or should have known that he was not authorized to accept Martin's case.

44. Littlejohn did not advise Martin on a timely basis that his law license was about to be suspended and that it was impossible for Littlejohn to complete Martin's legal matter before the suspension went into effect.

45. Littlejohn intentionally concealed from the Martins the fact that he was about to lose his law license for the fraudulent purpose of inducing Lawrence Martin to pay Littlejohn a fee, when Littlejohn knew or should have known he could not complete the case before the suspension of his law license became effective.

46. On June 10, 2004, the date of Martin's first court appearance, Littlejohn advised Martin for the first time that his law license had been suspended and that Martin would have to hire a new attorney.

47. Littlejohn failed to return any portion of the \$1,500 fee.

48. On May 24, 2004, Kelly and Robin Roone ("the Roones"), filed a fee dispute petition against Littlejohn with the North Carolina State Bar.

49. On May 26, 2004, Littlejohn was served with notice of the Roones' fee dispute petition by certified mail and was directed to respond in writing within 15 days.

50. Littlejohn did not respond to the notice of the Roones' fee dispute petition, did not return any portion of the disputed fee and did not participate in fee dispute mediation.

51. On May 27, 2004, Timothy Lawson ("Lawson"), filed a fee dispute petition against Littlejohn with the North Carolina State Bar.

52. On June 10, 2004, Littlejohn was served with notice of Lawson's fee dispute petition by certified mail and was directed to respond in writing within 15 days.

53. Littlejohn did not respond to the notice of Lawson's fee dispute petition, did not return any portion of the disputed fee and did not participate in fee dispute mediation.

54. On June 10, 2004, Charles McClennahan ("McClennahan"), filed a fee dispute petition against Littlejohn with the North Carolina State Bar.

55. On June 12, 2004, Littlejohn was served with notice of McClennahan's fee dispute petition by certified mail and was directed to respond in writing within 15 days.

56. Littlejohn did not respond to the notice of McClennahan's fee dispute petition, did not return any portion of the disputed fee and did not participate in fee dispute mediation.

57. On June 21, 2004, Derek L. Brooks ("Brooks"), filed a fee dispute petition against Littlejohn with the North Carolina State Bar.

58. On June 26, 2004, Littlejohn was served with notice of Brooks' fee dispute petition by certified mail and was directed to respond in writing within 15 days.

59. Littlejohn did not respond to the notice of Brooks' fee dispute petition, did not return any portion of the disputed fee and did not participate in fee dispute mediation.

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

1. By failing to take timely, effective action to assist Philson, Crawford, Adams, Handy and McSwain with their cases, Littlejohn neglected client matters in violation of Rule 1.3.

2. By failing to keep Adams, Philson, Crawford and McSwain informed of the status of their cases, Littlejohn failed to communicate with clients in violation of Rule 1.4.

3. By failing to return the unearned portion of the fees paid to him by Adams, Philson, Crawford, Handy, McSwain and Martin, Littlejohn retained excessive fees in violation of Rule 1.5 and failed to refund the unearned portion of fees in violation of Revised Rule 1.16.

4. By failing to respond to the State Bar's notices regarding fee dispute petitions filed by Adams, Philson and Crawford, McSwain, the Roones, Lawson, McClennahan and Brooks, Littlejohn failed to participate in good faith in the mandatory fee dispute resolution process, in violation of Rule 1.5(f).

5. By failing to return \$90 filing fees to Adams and Handy, Littlejohn failed to return client funds as directed by the client in violation of Revised Rule 1.15-2(m). By applying the filing fees to his own benefit or those of third parties without his clients' knowledge and consent, Littlejohn engaged in criminal conduct that reflects adversely on his honesty and trustworthiness as an attorney in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

6. By intentionally concealing the imminent suspension of his law license from Handy, McSwain and the Martins for the fraudulent purpose of inducing them to pay legal fees to him, despite the fact that Littlejohn knew or should have known that he would not be able to complete the case before the suspension of his law license went into effect, Littlejohn committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b) and engaged in conflicts of interest in violation of Revised Rule 1.7.

7. By accepting fees from or on behalf of McSwain and Martin and by undertaking to represent them respecting new legal matters after the Disciplinary Hearing Commission's order had been entered in violation of 27 NCAC Section .0124(c) of the State Bar Discipline & Disability Rules, Littlejohn engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) and engaged in conduct constituting contempt of the N.C. State Bar within the meaning of N. C. Gen. Stat. § 84-28(b)(3).

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. On or about Oct. 10, 2003, Charles McClennahan paid Littlejohn \$1,000 in legal fees and \$110 in court costs regarding for two matters Littlejohn was handling for McClennahan. Littlejohn deposited the \$110 in costs into his attorney trust account at Southern Community Bank.

2. Littlejohn misappropriated the \$110 he received from McClennahan for his own benefit or the benefit of third parties other than McClennahan without his client's consent.

3. Littlejohn did not take effective action to resolve McClennahan's legal matters and failed and refused to refund and portion of the fees and costs to McClennahan.

4. On March 16, 2004, Louinice Motsinger retained Littlejohn to represent her in a traffic matter in Forsyth County District Court. Motsinger paid Littlejohn \$325, of which sum \$125 represented the court costs in the case.

5. Littlejohn failed to deposit the \$125 in court costs that he received for Ms. Motsinger into a trust account. Instead, he misappropriated the \$125 for his own benefit or that of third parties other than Motsinger without her consent.

6. Littlejohn failed to appear in court for Ms. Motsinger and she ultimately handled the traffic matter herself.

7. Littlejohn did not refund any part of the \$200 fee or the \$125 in costs that he had received from Ms. Motsinger.

8. In 2002, Terri Stewart paid Littlejohn \$850 to represent her in a civil action filed against Stewart by her former landlord.

9. Littlejohn took little or no effective action to represent Stewart in the civil action and a \$19,000 judgment was entered against Stewart. Stewart's father paid the judgment and later discovered that the judgment had not been canceled.

10. Stewart contacted Littlejohn, who agreed to get the judgment canceled for a fee of \$2,350. He agreed to apply the \$850 fee that Stewart had previously paid toward the \$2,350 fee. Stewart also paid Littlejohn an additional \$1,500 in three installments.

11. Littlejohn took no action on Stewart's behalf and she ultimately had the judgment canceled without any assistance from Littlejohn.

12. Littlejohn failed and refused to refund any portion of the fees paid to him by Ms. Stewart.

13. In mid-March 2004, Alan C. Hurlocker and his wife contacted Littlejohn to represent them in a custody matter. Littlejohn agreed to handle the matter upon payment of a \$1,000 fee.

14. Mr. Hurlocker paid a total of \$890 toward the \$1,000 fee in several installments between March 18, 2004 and April 23, 2004.

15. Littlejohn did not tell the Hurlockers that his law license was about to be suspended following the April 14, 2004 DHC hearing.

16. Littlejohn did not provide any effective assistance to the Hurlockers and failed and refused to refund any portion of the \$890 fee he had received.

17. In August 2000, Angela Nellums Byrd paid Littlejohn \$1,200 to represent her son in a criminal matter.

18. Littlejohn did not enter an appearance on behalf of Ms. Byrd's son and did not take effective action to assist him.

19. Littlejohn refunded \$345 of the fee but failed and refused to refund the remaining unearned portion of the fee paid by Ms. Byrd.

20. Littlejohn's conduct is aggravated by the following facts:

- a) He was motivated in part by a dishonest or selfish motive.
- b) He engaged in a pattern of misconduct.
- c) He engaged in multiple violations of the Rules of Professional Conduct.
- d) He has failed to make restitution.
- e) He failed to cooperate with the State Bar's investigation into his misconduct and disobeyed an order of the Chair requiring him to respond to discovery served upon him by the State Bar.
- f) Littlejohn has failed to demonstrate any remorse for his misconduct or acknowledge wrongdoing.
- g) Littlejohn has prior discipline.
- h) Littlejohn has substantial experience in the practice of law.
- i) Some of the victims of Littlejohn's misconduct were particularly vulnerable.

20. There are no mitigating factors.

21. The aggravating factors far outweigh the mitigating factors.

Based on the foregoing findings of fact, the Committee enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. Littlejohn's dishonest conduct and neglect has caused significant actual harm to his clients.

2. Littlejohn's misconduct has also harmed the standing of the legal profession by undermining trust and confidence in lawyers and the legal system.

3. Disbarment is the only sanction that can adequately protect the public for the following reasons:

a) Littlejohn continued to violate the Rules of Professional Conduct after the two-year suspension of his law license went into effect. It is thus apparent that lesser sanctions are insufficient to protect the public and impress upon Littlejohn his obligations pursuant to the Rules of Professional Conduct.

b) Littlejohn's misconduct was repeated and occurred over a substantial period of time and therefore appears to be the result of moral turpitude and/or a serious character flaw, rather than an aberration or mistake.

c) Littlejohn has failed to show any evidence that he has addressed whatever trait or flaw caused his misconduct and therefore the Committee concludes that there is a risk that he would continue to engage in further misconduct if he were to remain licensed to practice law. Indeed, Littlejohn failed to answer the State Bar's complaint and failed to appear at the hearing herein.

d) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Littlejohn committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina. An attorney's duty to preserve client funds entrusted to the attorney is one of the most sacred that an attorney undertakes. An attorney should never violate that duty or the trust that the client has in the attorney.

e) The protection of the public requires that Littlejohn not be permitted to resume the practice of law unless and until he demonstrates that he has reformed, that he understands his obligations to his clients, the public, the courts and the legal profession, and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation among other things, before they may resume the practice of law, whereas no such showing of reformation is required of attorneys whose licenses are suspended for a term certain.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, and any mixed findings of fact and conclusions of law howsoever designated, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. Darwin Littlejohn is hereby DISBARRED from the practice of law.
2. Littlejohn shall surrender his law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon him if he has not already done so in connection with his prior orders of discipline.
3. Littlejohn shall pay the costs of this proceeding as assessed by the Secretary of the N.C. State Bar no later than 30 days from service of this order upon Littlejohn.

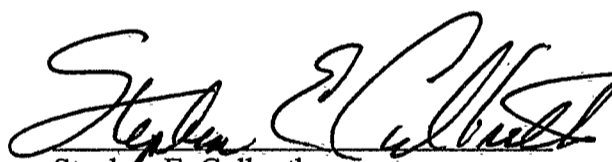
4. Littlejohn shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").

5. Prior to seeking reinstatement of his law license, Littlejohn must present satisfactory written evidence to the Office of Counsel that he has made restitution of the following sums to the clients listed below, or, if appropriate, to the Client Security Fund:

- a) \$290 to Shirese Adams
- b) \$250 to Sharon Philson and Angela Crawford
- c) \$590 to Cynthia Handy
- d) \$1,000 to Christopher McSwain
- e) \$1,500 to Lawrence Martin
- f) \$1,000 to Betty Kelly and Robin Roone
- g) \$500 to Timothy Lawson
- h) \$250 to Derek Lee Brooks
- i) \$1,100 to Charles McClellanhan
- j) \$325 to Louinice Motsinger
- k) \$2,350 to Terri Stewart
- l) \$890 to Alan C. Hurlocker
- m) \$855 to Angela Byrd

6. Prior to seeking reinstatement of his law license, Littlejohn must present written evidence documenting that he is neither addicted to nor abusing any illegal drugs or prescription medications and that he is not suffering from any mental or physical condition that would prevent him from engaging in the practice of law in a competent, ethical manner.

Signed by the undersigned chairman with the full knowledge and consent of the other Hearing Committee members, this the ^{10th} day of June, 2005.



Stephen E. Culbreth
Chair, Disciplinary Hearing Committee